

1897-029 Charary Causes. H. L. Flanary vs. Elkanah Pennington
Lee Co.

Orr, Litton, Herndon, Hobbs, Cox, Bryant, Rivers, Jesse, Scott

CA - Estate Dispute
T - Property

- Deed

To the Hon. W. T. Miller, Judge of the Circuit Court of Lee county, Va.:

Humbly complaining your orator H. L. Flanary and your oratories,
Lizzie Orr, nee Flanary, Rebecca A. Flanary, and Mary Flanary, children and
heirs at law and widow of Thomas Flanary, deceased; and grand children
and daughter of Levi Pennington, deceased; the said Rebecca A. Flanary
being an infant and under age, ¹ issues by her next friend H. L. Flanary.,
would respectfully represent and show unto your Honor that the said
Levi Pennington in his lifetime was possessed of two certain tracts of
land, his home place whereon he lived, near the present town of
Dryden, and the other known as the Bridges place, near to, but not ad-
joining the home place, and North thereof. On the Bridges place there ^{is} as
a spring of water of moderate volume and sufficiently elevated
to be carried in pipes to the home place, and sufficiently near to
be used for farm and domestic purposes on said home place. On the
24th day of April, 1867, the said Levi conveyed the Bridges place
to his two sons William and Elkanah Pennington reserving the use of
water on the same to himself, a copy of this deed marked 1 is filed herewith
as part hereof.

The said Elkanah and William Pennington conveyed these same
lands whereon the said spring is situated to William Yeary by deed
bearing date Oct. 29, 1870, with covenants of general warranty, in which
they made no reservation. A copy of this deed marked 2 will also be
found filed herewith, as part hereof. William Yeary by deed bearing date
on the 18th day of March 1871, conveyed these same lands to S. C. Stallard
and by a post script thereto attached undertook to reserve a
use to the water thereon in favor of the said Levi. A copy of this
deed marked 3 is also filed herewith as part hereof. The said S. C. Stallard
by deed bearing date on the 14th day of May 1874, conveyed
these same lands to the said Thomas Flanary with a similar
post script added to his said deed. A copy of this deed is also filed
herewith as part hereof, marked 4.

Thus matters stood when on August 6th, 1872 the said Levi
Pennington conveyed to the said Elkanah Pennington the home place and
whatever right ~~that~~ the said Levi had, if any, which he could con-
vey, to use water from the said Bridges place. A copy of this deed is
herewith filed as part hereof marked 5.

By this last conveyance it will be seen that the said Elkanah for the first time became clothed with the said water right which he had theretofore conveyed to William Yeary by deed with covenants of general warranty. This covenant as your complainants are advised runs with the land, and inures to the benefit of the holder thereof; so, as they are advised, the said Elkanah, having conveyed said water right when he did not have title thereto, when he afterwards became clothed with that title it instantly vested without further conveyance in his grantee or his vendee absolutely, and thus by operation of law, said water right became absolutely vested in your complainants; and the said Elkanah Pennington has no interest whatever therein. Notwithstanding these plain principles of law and equity, the said Elkanah lays claim to the said water, and the use thereof, and the profits therefrom, as herein after set forth. After all these several conveyances and about the year 1889 or 1890 the Louisville and Nashville Rail Road was constructed partly through the Southern edge of the home place and a depot was established thereon and the town of Dryden has grown up around it. The said Elkanah Pennington undertook to convey the use of water from the Bridges spring to said Rail Road Company, as your complainants have been informed. Not content with this he has entered upon the said Bridges land, constructed a reservoir at the head of said spring from which nearly the entire water is conducted into pipes some several yards on the said Bridges land, and thence onto the said home place, and on to the town of Dryden, where the said Pennington delivers the same to the citizens thereof, and for which he charges and receives rents, and thereby turns the said water into profits to himself. Your complainants are advised that under said deeds the said Elkanah Pennington has no right whatever to the use of said water either on or off of said land, but if they are mistaken in this, then that he has no right to do other than take and use water out of and from said spring; and that he has no right whatever to construct reservoirs and lay pipes and conduct off of the said land the water flowing from said spring. But if mistaken in this view, then that he has no right to pipe use and take away any more water than what is necessary for the use of the home place, and he cannot sell rent or convey it to the use of any one except himself for the farm whereon the said Levi

resided. Much of this water is used off of said farm and on other lands. The deeds under their peculiar language and the unusual and uncertain course and effect of the conveyances creates a cloud over the title and greatly interferes with the free use and enjoyment of your complainants property, and would materially lower the price thereof, should the said Pennington's use thereof as claimed by him be found to be his right. The rents and profits of said water is derived from numerous persons and has been running on for some time and involves matters of long and complicated accounts, and the same is being thus daily used by the said Pennington, owing to this fact, and the impossibility of a correct ascertainment by complainants of the amount of such rents and profits, they pray that the said Elkanah Pennington be enjoined and restrained from renting, selling or delivering to the citizens of Dryden or any other person or persons by pipes or otherwise any of said water, and that he disclose and make known how much he has received therefor and from whom and when received; that he be required to take and remove the pipes, reservoir and other work off and from said land; that a decree be rendered making clear and specific your complainants title, and fully and clearly defining the said Pennington's right, if he has any, to the said water.

To this end they pray that ~~that~~ the said Elkanah Pennington be made the party defendant to this bill and that he answer the same, but not on oath, that being waived; that the injunction and relief herein prayed for be granted, and such other ~~and~~ further and general relief ~~and~~ the complainants may be entitled to receive.

May process issue, directed, &c., and your complainants will ever pray, &c.,

Pridemore & Sewell,

Orr, Blankenship & Ewing,

P.Q.

Virginia, Lee County, to wit:
I, Wm. A. Orr Jr., a Notary Public in and for the County and State aforesaid, do certify that W. L. Hawery this day personally appeared before me in my said County, and made oath that the facts stated in the foregoing bill are true, so far as they depend on his own knowledge and so far as they depend on information derived from others he believes them to be true.
September 25th 1895. W. A. Orr Jr. Notary.

upon examination of this bill & libels filed
thereunto, answers of Elkannah Pennington's affidavits
filed thereunto I am of opinion that while
the rights claimed by the plaintiff & defendant
should be adjudicated & settled, after the bill has
been matured & cause ready for hearing yet
there is no reason why an injunction should
be now granted & the same is therefore
refused. This Jan'y 16th 1846

W L Miller Judge
Circuit Court of Lee Co Va

H. L. Gilman et al

Bill in Chancery

Elkannah Pennington

H.L.Flanary et als.

Plaintiffs

vs.

In Chancery.

Elkanah Flanary

Pennington

Defendant.

To the Honorable W.T.Miller, Judge of the Circuit Court for Lee County, Virginia:

The answer of Elkanah Pennington to a bill in chancery and notice by H.L.Flanary and others, praying for an injunction enjoining and restraining this respondent from using, renting, selling or delivering to the citizens of Dryden or any other person by pipes or otherwise, any of the water from the spring on the tract described in said bill as the Bridges tract.

Respondent is advised that said bill does not disclose sufficient grounds to entitle the complainants to an injunction, as prayed for in said bill. But should other and further answer be required of said respondent, answering he says that it is true that the late Levi Pennington, in his lifetime, was the owner of two certain tracts of land, one the home place upon which he then resided, near the present town of Dryden, the other the Bridges place near to, but not adjoining said home place. It is further true that there is and then was on the Bridges place, a spring of water sufficiently elevated to be carried in pipes to the home place. But it is not true that said spring was sufficiently near to the home place to be used on said home farm for farm and domestic purposes, without carrying the water from the same in pipes from said spring to said home place. It is not true that said spring is only of moderate volume of water but upon the contrary, said spring is a large free and bold running spring, affording sufficient volume of water for the Bridges farm, the home farm and two or three others of the size of both of said farms.

It is true that on the 24th day of April 1867 said Levi Pennington conveyed to this respondent and his brother William the Bridges tract of land, and in said conveyance, the said Levi in these words reserved water on said tract of land for the use of

the place he then lived on, to wit: "The said Levi Pennington reserves to himself full privileges of warter on the above conveyed lands for the use of the place he now lives on forever." It is further true that on October 29th 1870, your respondent , together with his brother William, conveyed that part of the Bridges tract of land, upon which said spring is located, to one William Yeary, as is shown by the deed, a copy of which is filed with the complainant's bill marked 2. It is true that this conveyance is with covenants of general warranty, and that no reservation is made. But while is it true that no reservation was made in said deed, yet said Yeary fully understood that the said Levi Pennington had made the reservation, as shown above, and that your respondent and his said brother were selling said land subject to said reservation. It is further true that the said Yeary and his wife, by deed, conveyed said land to S.C. Stallard. In this conveyance, the said William Yeary and wife reserved to the said Levi Pennington the privilege of a water ~~right~~ right to said spring, as is fully shown by exhibit 3 filed with complainant's bill. It is further true that the said Stallard and wife afterwards, to wit, on the 14th day of May 1878, conveyed said land to Thomas Flanary, under whom these complainants claim. In this conveyance the said Stallard reserved to Levi Pennington a privilege of a water right to said Spring. These reservations by the said Yeary to Stallard, and by the said Stallard to Thomas Flanary, were intended to secure to the said Levi Pennington and those claiming under him, the said Pennington's home place, the full right of the reservation made in the deed of the said Levi to your respondent and his brother William. And respondent is advised that it charges the said Thomas Flanary and those claiming under him with full notice of the fact that the said Levi Pennington had reserved the right to use the water from said spring on the Bridges tract for the benefit of said home place forever. It is further true that on the 6th day of August 1872, the said Levi Pennington conveyed to this respondent the home place and the reservation of ~~of~~ the water right which he had made and retained to himself in the deed a-

foresaid. It is true that respondent then for the first time became clothed with said water right. Respondent denies that his covenant of general warranty contained in the deed to Yeary enures to the benefit of the complainants as the holders and owners of said tract of land, because in the conveyance to them by Stallard and wife as well as in the conveyance by the said Yeary and wife to Stallard, said water right is reserved to Levi Pennington, and your respondent is advised that it matters little how strong the covenant may have been in the deed of himself and William to Yeary, yet that the complainants are entitled to no benefit therefrom above that which is contained in their own deed. Respondent denies that his title to said water right instantly vested in the vendees of his grantee, by operation of law or that said water right became absolutely vested in complainants because even taking it for granted that said water right would by operation of law have become vested in his grantee Yeary by reason of the covenants in the deed of himself and William Pennington to Yeary, yet he denies that it became vested in the grantee of Yeary or in the complainants because said water right is expressly reserved by Yeary in his conveyance to ~~St~~ Stallard, and by Stallard in his conveyance to Flanary. 11

Respondent says it is true that he does lay claim to said water and the use thereof to the extent that he is now or ever has ~~x~~ used the same. That use is for water on the home place of Levi Pennington which was conveyed to respondent together with said water right by the deed of Aug. 6th 1872.

Your respondent will now show your honor the exact situation of this whole matter. Several years prior to any conveyance mentioned in the complainant's bill and while the said Levi Pennington was the owner of his said home place and the said Bridge place he put in a line of pipes from his home place up to said spring for the purpose of drawing water from said spring on the Bridges place to his home farm for all the uses thereof. These pipes were in on the 24th day of April 1867 when the deed was made to respondent and his brother William Pennington, they were also in at the time when each of the several conveyances mention-

ed in the bill were made. They were in there on the 6th day of August 1872 when he took possession of said home tract under the deed of his father to him. They have remained in ever since. These pipes, thus in at the time your respondent took possession of said home tract, and as they had been in ~~xxxxxx~~ back through all the time of the making of said several conveyances were exactly the same size in bore as the pipes now in. Respondent will now show your honor that from the 6th day of August 1872 up to the present time he has had said line of pipes in withdrawing from said spring the same amount of water that he is now withdrawing from it, that he has asserted that as a right which he has openly, notoriously continuously and exclusively maintained, and he is advised that even though he may have no written title thereto (which he by no means admits) this continuous open notorious and exclusive possession under claim of right vests him with an indefeasable right and title to withdraw by the means which he is now using, the amount of water that he is now taking from said spring.

Respondent says that it true that he has constructed a reservoir at the head of said spring from which he is withdrawing water as aforesaid, but these complainants are the last people on earth that should make any complaint of that fact, because in the first place it is a very great improvement to said spring, in the second place, they helped him to erect it, in the third place, they are now using it and enjoying as many benefits from it as he is, but he most emphatically denies that he is withdrawing nearly the entire amount of water from said spring, but of the contrary he is not taking more than half at the dryest season of the present year, which he believes to be one of the dryest in the history of this country. From the head of said spring to where ~~xxxx~~ the branch from said spring leaves said land is about one hundred or one hundred and fifty feet. And there is enough water in said branch outside of said ~~tract~~ ^{pipe} to supply at least ten ~~xxxx~~ such farms as that owned by the complainants with all the stock water and all the water needed for farming purposes on such farms.

- -

It is true that respondent has been carrying and delivering water through his pipes from said spring to some of the people in the town of Dryden. This little town of Dryden is built on the farm known as the Levi Pennington home farm, and he is delivering water to no person off of said Levi Pennington home farm. It is true that respondent has received some rents from said water privileges amounting in all to the sum of about \$100.00 or \$150.00, but he most emphatically denies that he has received any profit therefrom, because all he has received from all sources, except for his own uses) will not begin to pay him interest on the expenditure he has made to put in said pipes. But respondent denies that this water that he has piped to, and is now being used by the citizens of Dryden does any injury whatever to the complainant, because as before ~~complainant~~ stated he conveyed said water to his dwelling house where all that he did not use run out from the pipes and passed over his own lands down to a point between his dwelling house and the said town of Dryden where it sank. And all the water he is now taking to the town of Dryden is the excess over what he used for his family and farm purposes and was wasted on his own lands before he extended said pipes and would now be wasted if he did not conduct it to said town.

Respondent herewith files the affidavits of Goege C. Jessee and G.W. Pennington as part of this answer and asks that they may be considered along therewith. Said affidavits are marked "J.C. J." and "G.W.P.".

And now having fully answered respondent prays that said injunction be not granted.

Levi Pennington

Sworn to before me this the 11th day of
November 1895

A. B. Munsey Clerk

Elkharrah Pennington

ackd Answer

H. S. Fleuryals

Filed in open court
and by leave thereof.
Mar 10th 1896.
A. B. Munsey clerk

H. L. Flannery & others Compts

vs

Elkanah Pennington Deft

In Chy

This cause came on this day to be heard on the bill of the plaintiffs duly matured at rules and exhibits therewith filed. The answer of the defendant, with general replication thereto and the depositions of witnesses, and was argued by Counsel.

On consideration whereof the Court is of opinion

First: That the reservation in the deed from Levi Pennington wife to Wm & Elkanah Pennington constitutes an easement appurtenant to the tract of land on which the defendant now resides.

Second: That Thomas Flannery took the land conveyed to him by S. C. Stallard wife subject to said easement & his children the plaintiffs now hold it subject thereto.

Third: While the Court is of opinion that the extent of said easement is only to take water from the spring in question in the

manner & quantity which it was taken at the date of the deed from Levi Pennington to Wm & Elkanah Pennington to be used on the place now occupied by the defendant for domestic and farm purposes only and not for sale to others

Yet the Court is of opinion from the evidence that there is at present being no more water taken from said Spring than there was at the date of said deed & no more than is reasonably necessary for farm & domestic purposes & that the overflow furnished to the citizens of Dryden does not pay interest on the sum expended in putting it there, that therefore while it would be improper for the Court now to adjudicate what the rights of the parties may be in the future should said spring by reason of the growth of Dryden or other cause become a source of ~~income~~ clear profit, yet at this time the defendant should not be enjoined from furnishing

water to the Citizens of Dryden
or required to account to the
plaintiffs for any of the proceeds
thereof

It is therefore adjudged, ordered
and decreed that the plaintiffs
bill be and the same is
hereby dismissed at the costs
of the plaintiffs for which execu-
tore may issue

~~And this cause is stricken
from the docket~~

Memorandum:

On motion of plaintiffs
a suspension of the above
decree is granted ~~upon~~
for the period of 60 days
upon the condition that
the plaintiffs or some one
for them execute bond
before the Clerk of this
Court in the penalty
of \$50.00 to pay such
damages as may be
sustained by reason
of said suspension.

H. L. Henry & Co
v. G. Dorell
General
Elkanah Remington

Eu. C. O. B. No. 6. p. 87

Gunter
M. F. M.

Nov 10th 1897

(5)

The Depositions of Mary E.
Flannery and Elizabeth O'Dor
taken by agreement of
parties at Orange Va Jan
the 5th Day of June 1897
to be read on behalf of the
~~Plaintiffs~~
~~Defendants~~, in rebuttal
in the Chancery Cause of
H. L. Flannery et als. against
Edmund Pennington
in the Circuit Court
for Lee County

Present - W. A. D. for Plffs and Ed. Pennington for Deft.

Tested by Deft. Counsel.

Ques: Did the Deft. ever tell you
that his personal pipes were
sent in, that they cost him
only from five to six or
seven hundred dollars,
but that he told others they cost
more, as words to that effect?

Ans. He told me that they cost him from
six to seven hundred dollars, that he
had not made any particular calculation
his wife told me that they cost one
thousand dollars she told me so be-
fore the Defendant told me they cost
six to seven hundred dollars

2 page

This conversation took place about the time the
pipes was completed

Ques 2 Did Deft. ever talk to you about
you and your children giving
him the right to convey water
by pipes from the Spring in Con-
troversy to Dryden for the Rail
Road Co. and if so state what
was said between him and
yourself on that subject on that
occasion in reference
to that matter?

Ans. he had talked to Harvy several times
about getting the right for the Railroad Company
so harvy told me. and one morning he come
to my house and wanted me to make deed
to Spring for purpose a bove mentioned and
I told him that ^{thing or the} Rail Road Com. would ^{have to} give
him One Thousand Dollars, for same before
she would do so

Ques 3 Did you on that occasion
or any other occasion tell
him that he had been a great
help to you in raising your
children, and did you see that
2

Godfrey

account become satisfied
for him to take the water

Ans. No Sir I did not he told me that he
had made it appear that he had done
more ~~for~~ the children than he natur-
ly had ^{I say} done. I don't see why you do
^{he says} so that he had a reason for I to

This answer excepted to be cause of
W. A. Orr Junior is standing up
& dictating the answers for the witness
the the witness seem to look to the
said W. A. Orr to save up this ans
The objection is not a ^{Elkanah Pennington} fact
or a diff.

Ques 4 State anything the Defendant
may have said to you at any
time about Col O'Brien wanting
him to secure from you
the right to convey the water
from the Spring to Dryden
for the V.B. Co. if he said
any thing about it.

Answers Just what I told you a while ago

Ques 5 Did the Deft. at any time before
he put in the present pipes

tell you he would leave it
to the boys, meaning some of
the Dryden people, as to what
part of the profits you should
have on the water to be de-
livered in Dryden, and
did he or not make this
proposition for the purpose
of obtaining your consent?

Ans He just mentioned that the boys, in
Dryden would need some water I have
thought that I would take the water down
for my part and let the boys pay
her for her part. he said that he was
afraid that the RR Co would hold him
responsible for the water on acct of
the Depot being located here. his wife
was present at the time of this conversation
and was not satisfied at the idea of
him wanting to divide the profits
of water at the same time I told
him that the children ^{when they} become of age
that they would not be satisfied
and would give him trouble if the
thousand dollars was not paid

Ques 6 Did you or your children

2nd Sheet

at any time give your consent
for the Defl. to put in the
pressed-pipes at your Spring?

Ans. I did not I did not tell him to
put them there nor not to put them
there

Ques 7 Did you for yourself or for any
of the other plaintiffs, at any time
authorize H. L. Hawley to make
any concessions or admissions
to the Defl. for the purpose
of bringing about a compromise
of this suit?

Ans. I did not

X By E. L. Pennington ~~Henry E. Tinsley~~
Ques 1 Could you not of stated all of these
answers when you was aot to state all
the conversation between you & Elkand
Pennington & do you remember of stating
in your deposition hear to fore that said
Dependant had never said any thing to you
about putting in the iron pipes, until
the pipes wa put in now then what has
or has caused you to remember so much
more now than hear to fore has told you
that it was necessary for you to remember

A 1

These fresh or now stated facts
I stated all the ^{best} that was asked me before
and no one has told me any thing or now
facts well I don't remember the exact statement
in my deposition but it is there to show
for all to see

Ques was the iron pipes in before said
Dependent came talkin as you state for
the B. R. Co's Benefit now did said
Dependent come to you for permitting
to put in the iron pipes ~~or~~ or was it
the pipes put in without ^{you} consulting
me

A no he told he was going to put them in at
the head of said spring I never told ^{him} to put
them there or not to put them there

Ques has there ever been any talk though
you Plaintiffs as to whether ^{or not} if you was
heat in this suit that it wouldnt
cost the plaintiffs any thing much
as the farm on which said spring
is located has been sold by a decree of
court & still stands good for the
purposes money sold for

Ans I havent had any thing said about such
talk
Mary E. Flanagan

Elizabeth Cross a witness
heretofore Testifying in
this Cause being ~~sworn~~
in rebuttal Deposes and says:

Ques 1 Were you present at a time
when the Deft in this suit had
a conversation with your
Mother concerning the cost of
the line of pipes from your Spring
to the Town of Dymore, 1870
State what he said concerning
that matter?

Ans Yes I was present at such time
and he said I think to the
best of my recollection they
only cost him from 600 or
700 hundred dollars he thought,
but he had told others they
cost him more.

Ques 2 Did you at any time act
or ass a witness for the
Defl. to leave water an ac-
count of any help Defl-
may claim to have been to
your Mother in raising her children

Ans.

I never expressed any willingness for him to have water on any account, unless we were amply paid for such.

Ques 3

State if you remember any conversation you may have heard between your mother and Dept. in regard to the Dept. procuring a water right from your mother & her children for Col. O'Brien for the benefit of the B.P.C.?

Ans.

I remember him coming to our house and telling my mother that Col. O'Brien had been to his house and asked him why he had not been up there and got those minor kids dead to that water. My mother told him when she and her children made a deal to her water the Dept. or Col. O'Brien would have to pay her and children one thousand dollars.

Ques 4

Did you at any time give your Bros H. L. Hanary

authority to make any Com-
missions as a commissioner
concerning this Suit - To
Effect a compromise
State what he may have
said about such com-
promise, if any thing?

Ans.

I never gave my Brother authority
to do any thing in regard to a
Compromise. But I do remember

H. S. Flanagan, my brother, coming
to my house one day and telling
me Mr. Pennington had offered
a compromise and I told him
no we did not go into the matter
to compromise, and he said the claim
was to let him compromise with
the Deft. and I saw old Dr. Stillard
into paying the debt of 300 thousand
dollars on the land I told him
no again, and he said well if I
can compromise and make 2 or 4
thousand dollars out of this thing
what need you care and then
you can begin the suit - a new
in your own name.

X was your recollection as clear when
I asked you gave your statement some time
back in your Deposition as it is
now as you now so well remember
the conversations of long ago will you please
state the time of such conversations
day of month & month of year &c

Ans My recollection in regard to the
matter was as clear when I gave
my former statement as it is
now, but I was not asked
to tell this last statement, and
as to the time it was just about
the time L. and N. R. R. was being
built, and as to the day of month
and month of year, I do not
remember.

3
ques is it not the fact ^{that} the R. R. Co has
a water right for their tanks & purposes
from Shelby Hobbs a large spring near
by the spring in controversy. now
if the R. R. Co did wish to purchase water
of the spring in controversy as they did not
do so then are the plaintiffs in this suit
in any way damaged by their wishing to
do so

Ans, yes the R. R. Co has a water right as I
am told from the Shelby Hobbs spring
but it was not obtained until your
efforts failed in trying to get the deed

from Plaintiffs.

As to the Damaged I know nothing.
And further this Affiant Rayath
Not Elizabeth A. Orr.

Wherefore going Depositions of
Mary E. Hawary and Elizabeth
A. Orr were taken, subscribed
and sworn to before me
at the time and place and
for the purposes in the
Caption mentioned
by consent of parties
Given under my hand
the 5th day of June 1897

Robert W. Orr J. P.
I Place 8 hours \$2.25

1

The depositions of A. J. Litten, & others
taken before the undersigned
Justice of the Peace at Dryden Va, on this 14th
day of October 1896, which are intended to
be read as evidence in behalf of the plaintiffs
in a certain suit in chancery pending in
the Circuit Court of Lee County Va, in which
H. L. Flanery et als are plaintiffs and
Elkanah Pennington is defendant.

Present A. L. Bridmore & James W. Orr of
Counsel for Plffs. and C. T. Duncan
Counsel for Deft.

A. J. Litten a witness of lawful age and being
first duly sworn deposes and says.

1 Please state your age, and
place of residence?

Ans 1 Age 34 years Oka Dryden Va

2 State whether or not you
are acquainted with the
Citizens of the town of Dry-
den. If you answer you
are, state if you know how
many families use water
from the pipes running
down from the Flanery Spring
by Mr Elkanah Pennington.
I mean the pipes said Penning-
ton put in?

The foregoing question is objected to because immaterial and irrelevant.

Answer for Sept.

Ans. 2 I guess I know pretty much all the people in Dryden and they all gause water except Two or Three Families I suppose there is ~~Twelve~~ Eighteen Families gausing water

3 Please state if you know the rate Mr Alkanah Pennington charges for month or otherwise for the use of this water if he charges anything.

Objected to because immaterial and irrelevant

Answer for Sept.

3 He charges me Fifty cents per month I don't know as to anyone else

4 ^{or not} Does these families thus using water reside on lots and land that formerly belonged to the old Levi Pennington farm?

5 I don't know as to that. It is on lands that C K Pennington owned when I came here

5 Does not Mr Elkanah Pennington live at the old home place of his father Levi Pennington now deceased if you answer yes. State how far the town of Dryden where the water is used spoken of by you is from where said E. Pennington now lives?

5 It is as I understand it to be the old Levi Pennington home place
It is about 850 yds from said Pennington's house to the town

6 How long has it been since this water was first piped to the town?

6 It has bin as well as I recollect five years since I came here and the water was here when I came

7 Has or not Mr Pennington carried said pipes, and uses water from them, on his land across the main road south of said town?

7 Yes he has run it across said Road and delivers it in a trough on his land south of said Road

X 4

- 1 The land on the south side of the road where Mr Punnington delivers water in to a trough is part of the Levi Punnington home place is it not?

Answer I don't know

- 2 How far is it from the town of Dryden to the spring from which the water is conveyed which the people of Dryden are using.
- 2 I guess about $\frac{3}{4}$ of a mile
- 3 Have you paid Mr Punnington 50 cents per month for each month since you have lived in Dryden, if not how much have you paid him.
- 3 I think as well as I remember I paid 85 cts for a while I don't remember how long 65 cts for a while I don't remember how long I then paid 50 cts per month since I do not know how much I have paid him in all I owe him some now that is unsettled

And further this deponent earth etc.

Witness / day 2000

A. J. Pittman

Larkin Herenden an other wit-
ness of lawful age depose &
say:-

Question 1. Please state where you now
live and how long you have
known the town of Dryden & the
farm on which it is situated?

Ans 1. I now live in the Town of Dryden
and have known the place ever since
it has been a Town
and I have known the Farm on which
it is situated and neighborhood
for Forty Five years

2 Is or was the town situated on a
part of the old Levi Ossington
farm?

2 Yes

3 Please state if you know how
many families in said town
use water from the pipes, run-
ning from the Flannery Spring
to said town?

3 Objection for same reasons before
stated

Duncan

I suppose Fifteen or Twenty

4 If you use or pay rent for said
water, state how much, and state if
you know any others & what they pay?

obj: stid to for reasons heretofore stated.
Henson

- 4 I have not said any myself
John P Herndon Paid rent for the store
for a while probably a year. I don't
know how much. I don't know what
others pay
5. Is any of said water conveyed on other land
than that of the Levi Pennington tract, and
if so how much?
- 4 There is one pipe running across the
Road in to a pasture field on the
France Zion Tract which is now
owned by E K Pennington's wife
6. State if you know whether Levi Pennington
deceased or his son Elkanah have had pipes continu-
ously running to the Thomas Flanery spring
since 1867, or has there been at any time a
discontinuance of said pipes and if so when?
- 6 I can't tell a bout that
7. Was there at any time a well dug at the
Levi Pennington residence from which
they used water?
- 7 I remember something a bout the well
- X 4
- 1 What was that well dug?
- 1 I don't remember the date but
it was in the life time of
Levi Pennington

2 Has it before or after he conveyed his home place to Elkanah Pummington?

2 don't know

3 Are you acquainted with spring upon the Bridges place, from which Elkanah Pummington conveys water in pipes if you say you are please state what kind of spring it is?

3 Yes I have been acquainted with the Spring for nearly five years It is reasonably large good and everlasting Spring very little liable to change by dry or wet weather

4 Is not said spring very near the east line of the Bridges Tract of land, and how far does the water run on said land until it passes to the land of some one else?

4 It is on the East end of the Harom and only runs 30 or 40 Yds till it runs into the branch from the very Hobbs Spring the branch then as I understand it is the line between said land and Hobbs land

5 Have you been to said spring since Elkanah Pummington has had his pipes in. If so state whether or not the Spring is in anyway injured by said Pipes.

I have bin there several times since the pipe has bin put in. The spring is bin considerably change by waling it up and thus forcing and raising the water. The water is good but for my Gause I would consider it I mgered for the convenience of the spring house

6 How deep is the spring forced up?

6 It is deep enough to dip up a bucket of water

7 How long is the wall around it.

7 It is a oblong square 4 by 6 ft I guess

8 Does not the spring house of Mrs Flannery embrace a part of the basin you speak of

8 Yes

9 Before said pipes were put in what became of the water from said spring.

9 It flowed into the Hobbs Spring Branch as above stated and then flowed down a hollow in a ratherer direction passing by and west of Levy Penninghouse near by and for many ^{years} when I first knew. It sunk on the Levy Pennington land.

10. Do said pipes take all the water from said spring, if not, about what proportion.

of it is carried off by said pipes.

Ans

No sir, I don't know the capacity of the pipe, but there is a right pretty stream flowing off out side of the pipe.

- 10 While Levi Pummington owned said land, and carried water in pipes from said spring, to his house what became of the waste water if any.

Ans

He watered his stock and some ran off into the branch.

- 11 Do you know the size pipes which Levi had in or the size of the pipes now in if so state the size of each.

Ans

I could not tell. He used wooden logs, can't tell the size of the bore. May have been $\frac{1}{2}$ or $\frac{1}{4}$ inch. And I do not know the size of the present pipes.

He examined in chief -

- 1 Is there any other constantly running spring on the plan-ary farm except the one spoken of by you?

Ans

I think not. There are some seeps of water on it, but I think they are mostly surface or wet weather springs.

2

Please state whether or not the quantity of water taken

from this spring by the present pipes ~~in place~~ does any injury to the plumery farm, in low times of winter, by lessening the quantity necessary for the use of stock on the place?

Ans. I think there is a sufficiency of water left on said farm for all the stock that could be kept on it necessarily, but the stream being smaller might require some means of collecting it.

2 ~~What is the size or sizes of the present pipes in use?~~

3 How near the head of the spring does the pipes start out. I mean from where the water issues from the ground.

Ans. About the basin as I have above stated is about 6 feet long, and the pipe is rather at the east end of it.

4 Does not the water stand in a pond over the place known as the head of the spring. If you answer yes state how deep it is?

Ans. Yes the water is raised but the exact depth I do not know, as before stated I think you can take an ordinary bucket and dip it up full
4 Is there not sufficient fall, to run say an inch pipe from this Spring to E. Peamington, there, without damming it at all?

Ans. I do not know, I would think so, for an inch pipe without damming

Re cross-examined

Could you put a pipe in there and get water to run in it at all without some damming.

Ans. I don't know I am not an expert in piping I do not know how that would be

And further this deponent swears not,
Witness Clause 1 day 50th Larkin Herndon
Oalley E. Flanary an actor
witness of lawful age being
first duly sworn deposes &
says:

Question 1 Are you the widow of the late Thomas Flanary, if you answer yes - Please state whether or not you now reside on the place known as his home place?

Ans 31
33

I am the widow of the late Thomas Flanory and reside on what is called his home place.

- 2 Please state how long you have resided thereon, and whether or not there has been pipes or pump logs, running from the spring in said place, to the dwelling house of your late father Levi Pennington now Elkanah Pennington's? all the time?

Ans I have lived on said place eighteen years. There were wooden pump logs first put in there, then about 12 years ago my brother Elkanah put dug him a well, and for a while at that time the ^{logs} ~~logs~~ were out ^{at the head of the spring}, then the well not proving satisfactory, he put in iron pipes and they have been in ever since.

I think the logs were out of the head of the spring for a year or two, or three I cannot say exactly.

- 3 Please state whether or not some four or five years ago Elkanah Pennington put in other pipes, and if so whether or not they are larger or smaller than the old ones; and ~~wishes~~ if these last

pipes extend on past the said dwelling house, on on to the town of Dryden. And whether or not you gave your consent to allow these pipes to go on to the town of Dryden?

Ans. At the head of the spring the pipes are longer than the wooden ones were, and these last pipes were put in by Elkman but I do not remember when he did so, but it was since the railroad was built, I suppose said pipes pass by his dwelling house and run into the town of Dryden as I see water delivered from hydrants in said town,

I was always perfectly willing for him to have water from said spring to his house whether he was entitled to it by his deed or not, but when it came to running it to the town of Dryden I thought myself and children were entitled to part of the pay for it, I do not know that I was ever asked for consent anything about it.

4 Please state whether or not in putting in these pipes the use and value of said spring is in any way injured? State all about that?

Ans

In the last walling, the damming of the water has caused it to flow more or deeper in my spring house, and the current dam, not holding all the water there is a dam made on the lower side of the spring house which causes the water to dam up deeper in the spring house. This makes the water inside the spring house deeper and more inconvenient about getting in and about the spring house and at times causes the milk vessels to turn over and I have to use rocks to set them on

5. Is there any other constantly running spring on the place except the one from which, these pipes run?

Ans

There is no constantly running spring on the farm other than this one, On the upper end of the place there is some springs that run in wet weather,

- 6 In times of dry weather, is there sufficient water left after these pipes are filled to, supply the stock on the place; unless some mode of percolating, or holding the water in place is used?

Ans

The water only runs a short distance on said land until runs into the Hobbs branch.

and the water is tolerably shallow and we usually turn out our stock so that they go to both branches.

- 7 If you had not the use of the branch & water, off of but near your land would the overflow from these pipes sufficiently supply your stock at all times without the use of troughs or ponds?

Ans I think it would be close work, it would perhaps have to be pond up.

X 24.

1. Were there pipes or pump logs conveying water from the spring on your farm to your father's place when your father purchased said land.

Ans Yes there were wooden pump logs conveying the water to his dwelling house.

2. Do you know the size of the bore in said logs.

Ans I don't know that I do. Are common size.

- 3 How were they put in at the head of the spring, was there any dam or anything made to cause the water to flow into the logs. State how this was.

Ans It was dammed up some, When I can first remember they were at lower edge of spring

house, but afterwards my father changed them and put them up where the pipes are now, and they remained there as long as they were there. End of the pipe is now about where the end of the logs was.

- 4 ~~Q~~ Is the water flowing from said spring outside of said pipes any less in quantity now, than it was when your father had in his pump logs.

Ans. I believe it is. The pipes are larger. He first had small ones and then larger ones.

- 5 Do you know the size of the main line of the pipes now in.

Ans I don't know that I do. The two first ones are larger than the ones first put in, and the next ones look larger also.

- 6 When was the spring walled up as now is.

Ans Some 4 or 5 years, I judge. It was walled up before with rocks, one side & end. Don't know who done this. Elkman took out the rocks and put in brick wall, or walled inside of the rock wall.

- 7 Did he not consult with you about putting in said new walls, and did you not consent thereto.

Ans * He told me he had some brick there to wall it and always told me he had the right to

well it, I don't know that I told him to do it or not to do it. I told him it would do me ^{very} well the way it was. I don't know ^{that} it is any better now than it was before though it looks better.

- 8 After the walling was done as it now is, did you not express yourself as well pleased with the way it was done and the condition it was left in?

Excepted to because no time, place or person is fixed, and excepted to as to all defects except herself. Pridemore, for Defts.

Sus I do not know that I did. If I did have forgotten.

- 9 Will you were not dissatisfied with ^{it} were you

Sus I rather it was not there, unless I was getting some pay for it.

- 10 As the spring was before your Brother walled it up as it now is, in times of hard rains did not the surface water run to wash into said spring?

Sus It has sometimes. It seems now to get muddy easier than it did before. I don't know what causes it. It gets muddy now every little rain I don't know what causes it. It did not do so before so much digging and walling was done.

- 11 Does it run wash from rains into the spring as it now is

Sus It did in the big rain about 12th of April last

12. Did you know at the time Elkanah put in the pipes that he was going to convey water to Dryden.

Sus

He told me he was. He had said something about their wanting water, & something about he had been ~~thinking~~ about taking it down for himself, and letting the boys have water and ^{they would} pay me. I understood him to mean ~~that~~ ^{that} ~~the~~ ^{the} ~~boys~~ ^{the} ~~had~~ ^{had} built at Dryden.

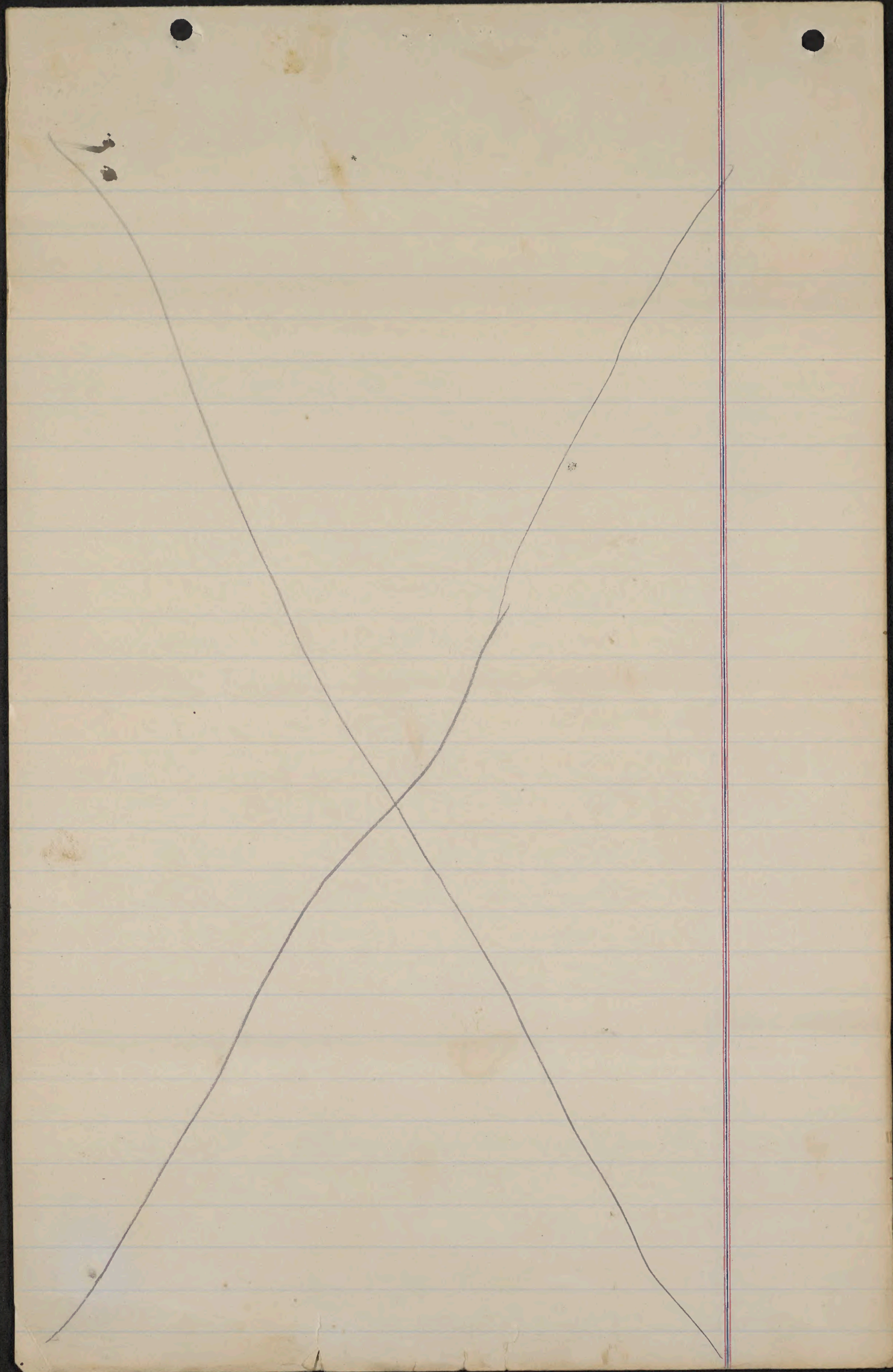
Said further this witness saith not.

Dolly E. Flannery.

Wm H. Hobbs. another witness of lawful age and being duly sworn deposes and says.

- Thos 1. What is your age and where do you reside?
Ans 1 I am 87 years and live in Dryden Va and have bin living here about 5 years
2. Was Elkanah Pennington conveyed water to the town of Dryden from the Thomas Flannery spring by pipes and if so how long have the pipes been in?
- 2 he has and the pipes has bin in 7 or 8 years and may be longer
3. How many families use the water?
- 3 I know certainly of Two Families having water from Drydens in there houses I have saw others having from the Drydens

4. How many families compose the inhabitants of said town?
4. I now count 22 Families living in the town
5. How many of these obtain their water from any other source than the hydrants put in by Mr Pennington?
5. I have seen some three or four persons carrying water from other places during the summer.
6. How much have you paid Mr Pennington for the use of water, and how much have others paid for water, if you know, and how much per month or per year is charged by Mr Pennington?
6. I don't know for sure but it seems to me the first year, that John Zion & myself paid 80 or 85 cents per month amounting to about \$3.40 and last year I think I paid him \$2.00 or \$3.00 since then I have not paid him ~~or~~ any thing yet, we have not settled and I don't know whether he is charging me any thing or not. The two or three dollars was for pasture & water together.
7. Do you know whether any water has been delivered from Mr Pennington's pipes off of the Levi Pennington tract?



7 No Sir I don't know The boundary of
The Living Pennington Tract

X Examined

1 You say there are about 22 families of people
living in the town of Dryden, how many of
these families are able to pay a monthly
sum for water?

1 I don't think there is half of The People
of Dryden is able to pay for there
water and there Taxes

2 Do you know whether Mr Pennington is
expecting and close in collecting water rents
or otherwise?

2 Do not know

3 Are you acquainted with Spring on the
Hawson farm from which Mr Pennington
brings water in pipes, if so please des-
cribe its size and condition?

3 I am acquainted with said Spring I have
been at it several times It is a very nice
Spring. There is a wall around it neatly
put up as well as I could tell about
3 by 5 ft The water at the upper end
seemed to be 12 or 14 in deep getting
shallower at the end of the wall where
it runs out

4 Please state whether or not the pipes
carry all the water from the spring

and if not about how much runs out
as a branch?

4. were they able to carry it all as to the
amount that runs out in to the branch
I can't tell there is a small branch
runs away from the spring.

5. Does the branch that runs away from the
spring afford in your opinion enough
water for farm use to such a farm
as the Flansburg farm.

5. Yes sir I do so

6. Does the manner in which said spring
is walled, in anyway interfere with the
value and usefulness of said spring for
farming and farm purposes

6. I do not think so

7. Do you know what it cost to put in
the line of pipes from said spring to the
town of Dryden, if not give your opinion
of what would be the reasonable cost of
putting in such a line of pipes?

7. I do not know what it did cost
but my opinion is that such a line
of pipe could not have been put
in for less than Five Hundred Dollars.
The foregoing questions and answers are excepted
to as irrelevant and immaterial.

Arr. for Deft.

Remainder

- 8
8 Do you know the size of the pipe at the spring, and is it not about 6 inches in the bore?
8 when I knew it, it was about 8 in but I think they tuck it out and put in two or three joints larger
9 Do you know how much live stock is usually kept on the Flavery farm by the present owners.
9 They ought to keep Two cows and Two head of horses some hogs a small No.

10 Did not Mr Pennington sell the lots on which the town of Dryden has been built?

10 He did

11 Did not the furnishing of the water from the Flavery spring, in said town enhance the value of the lots?

Objected to because immaterial

See case for Sept.

11 I don't know I bought the first the first lot that he sold before any water was furnished

12 Do you know of Mr Pennington collecting any water rent in labor?

12 no sir I don't

13 You say you think such a line of pipes would cost \$500 - From what point do you estimate?

13 From the Spring the dirtier line.

14. Is not the farm owned by defendants capable of keeping more stock than the number you have given as being now kept on it?

14 I don't know the land seems to be thin

15. Is not water a necessity, and is there a family living in the town that can not pay as much as fifty cents per month for water in some way or other?

3 14 If they are major to do it they might. whether they are able to do it or not I don't know

16 Do the pipes conveying the water to Dryden run across the right of way of the L. & N. Rail Road?

16 They do.

And further this witness saith nat.

W. S. Hobbs.

Witness Claims
\$1.00

A. J. Cox another witness of lawful age and being duly sworn deposes and says.

Ques 1 What is your age and where do you reside?

Ans. About 43 years, near Dryden & have store in the town.

2. State, if you know, how many families live in the town of Dryden and how many use the water conveyed there by Elkanah Pennington?

Ans. I think there is 28 families in the

Town. I do not know how many of these use water conveyed in said pipes

3. How many families use other water if you know.

Ans One family Mr Shufflebarger's use a well on the lot of A. J. & J. S. Leach. This is all I know of my own knowledge. I have been informed that the Hendon family uses a cistern on their lot.

4. How long have the well and cistern been in use?

Ans The well has been in use for about 2 years. The cistern has only been completed a short time.

5. Do you know what Mr Pennington charges any of the citizens of the town for water from his pipes and if so how much?

6 I know nothing about any one else except myself. The firm of A. J. & J. S. Leach for a while paid him 85 cents per month then for a while we paid him 65 cents then 50 cents per month. This is my best recollection. I am unable to give the periods of 85, 65 & 50. We only paid water rents for about 3 years. My present recollection is that we paid him in all about \$20.00

7. Is any of the water carried in ^{said} pipes on land other than the Levi Pennington land?

Ans

I think one pipe runs across the road and delivers water on land which as I understand formerly belonged to France Zion, but now belongs to Elkanah Punnington & wife

8. Did or not the bringing of ^{the} water to the town of Dryden ^{by Mr Punnington} enhance the value of lots in the town.

Ans

I would think so. My judgment is one half

X 24

1 How many of the families living in said town are able to pay water rents?

Ans.

I think they all are?

2 Do you think water rents could be collected from all of them.

Ans

No, not unless they saw cause to pay it.

3 Are you acquainted with the Flanony spring from which Elkanah Punnington brings water in pipes to his dwelling house and thence to said town, if so please tell the size and condition of said spring as well as you can?

Ans I do not know anything about it. Never examined its condition.

And further this witness saith not.

Witness 3 days 8/50

A. J. Cox

Then A Orr Jr. another witness of lawful age and being duly sworn deposes and says:

Ques
Ans

1. Please state your age and residence?

I am 36 years of age and reside in the town of Dryden. Have lived in said town about 2 years.

2. Are you the husband of Lizzie A Orr one of the plaintiffs in this suit.

Ans I am.

3. How many families live in the town of Dryden and how many use the water from the pipes laid to said town by the defendant?

Ans There are 22- or 23 families in said town and they all use said water unless it be one or two.

4. State, if you know, how much the defendant charges the citizens of the town for water?

Ans I do not know

5. How many houses or barns in the town have now, or have had, water conveyed from said pipes into them.

Ans The house in which I live, the John A Taylor house, has had water conveyed into the kitchen. The Barn lots of H.W. Farrington and A.K. DeBorst have water conveyed by said pipes into them. The water has not been

running into the house in which I live since last March a year ago.

6. How much, if any, do you think the conveying of the water to the town enhanced the value of lots in said town?

Ans. I think from all circumstances that one half would be a small enough enhancement.

7. What do you consider a fair price for a family or business house in said town ^{to pay} for the use of said water?

Ans. I think it depends somewhat upon the population of the town. At the present population I think .50 cents per month is high enough. If the population were more I think one who owned the water could afford to charge less.

8. How many business houses or stores use said water in addition to the families you speak of?

Ans. Only two I suppose, DeBuss's and Hobbs'.

9. Are you acquainted with the Flowering Spring and its present condition in reference to the dam & pipes inserted, and the quantity of water taken by the pipes & the amount left &c, if so

please tell all you may know about it?
 Ans. I am acquainted with said Spring; know
 somewhat of its condition in regard
 to its Dam & pipes. The dam is con-
 structed of Brick & cement on 3 sides
 & a natural Rock on the other.
 Dam is 3 or 4 ft. by 5 or 6 feet. Walls
 are perpendicular. The pipes come
 into the Pool from the east-
 End, through the east wall of said dam.
 The Pipe which comes into the Spring
 measures ~~measures~~ 15 inches
 in circumference with a cap
 on the head. 18 inches in cir-
 cumference. I believe, from the
 flow of water I have seen come
 from the pipes further down the
 branch, compared with that
 which flows from the Spring House,
 that said pipes convey more
 than half of the supply of said
 Spring in times of ordinary
 or dry weather.
 I think there are two joints of
 the largest size pipes at the head
 of the Spring. From the line is
 of smaller pipe, from an inch
 and a half to two inches, I would
 guess, in bore

Said Pool or Dam is about
an third within the Spring
House and the remainder
comes out under the
front shed of the Spring
house, close to the door
thru and at the west end
of said house

Q 10. How does the dam & pipes effect the spring, does
it in any way damage the spring, in its efficiency
& convenience to those using it, or in the height
of the water in the pool?

Ans The Dam ponds up the water within
the pool sufficient to dip up a
large bucket of water full.
The Dam runs so much around
the rock referred to that it is also
dammed up at the lower end of
the Spring house so that the water
will flood the head of the pipe
sufficient to force the water into
said pipes. When it is so dammed up
at the lower or east end of the
Spring house, it also floods the place
within the house where crocks
pans &c are used for dairy
purposes and. I learn from those
using said house that the

water when so ~~find~~ up over
turns or floats the vessels thereby
spilling their contents. It also
floods the platform on which
one has to stand when attending
to the duties incident to the spring
house making such duties
disagreeable ~~and~~ unpleasant
and annoying.

The main pool, and also the
place for pans, crocks &c are thus
made to contain most of the
dirt, ordure, or filth which
may and does accumulate
in said places; not allowing
such to pass off as freely as
should be the case

11. Is there or not a sufficiency of water left by the
pipes to conveniently water a reasonable num-
ber of stock on the farm, and how far is it
from the reservoir or spring house to the fence
enclosing the farm?

Ans I do not think there is sufficient water
left by the said pipes to water such stock
as the farm would accommodate,
in its present condition and not
near enough to furnish sufficient
water for the stock which the farm

Could be made to accommodate.
The distance from the Spring house to
the fence below the spring house
is not over 12 or 13 yards.

Q. How far is it from the fence to the junction of the
spring branch that flows from the Flanery spring
with the branch from Shelby ~~Wahls~~ spring?

Ans. I think the fence is about one half
the way between the spring house and
said junction of branches.

Q. What do you consider is the difference, if any,
between the value of the Flanery farm with a
reasonable sized pipe conveying the water
from the spring to Mr Pennington's residence for
the use of his place, and the said farm free
from such pipes or right?

Ans. I would consider the farm damaged
by the present sized pipes from farm
to six hundred dollars. If the pipes
were only half as large, I
would think the damage would be
proportionately less. If such incum-
brance was in the hands of some
one unfriendly toward me, if
I owned the place I would
not be willing to allow such
incumbrance to exist for
any price, could I prevent it.

X 4

14.

- 1 How many acres does said farm contain, and what proportion of it is cleared land, state the quality of the cleared land and its present condition as to productiveness?

Ans There are something over 100 acres in the farm according to the Stallard Deed, and I would suppose about 50 acres cleared. At the present time the cleared land, or perhaps most of it is thin of a sandy nature, with some mixture of clay. Have been acquainted with crops for only about 2 years and don't know well of what it has produced.

- 2 You speak of a fence being situated about midway between the Spring-House and the junction of the spring branch with the Hobbs branch state if said fence is on the line of the Hanany land?

Ans According to the Stallard Deed it is not. The Hanany land extends to the junction of the branches

- 3 The branch as I understand it is the

eastern boundary line of the Flanory Tract from the junction southward or down the branch is this correct, if so how far or what distance does said branch bound said land?

Ans. The branch is the Eastern boundary line from said junction of branches. The distance down said branch is about 200 yards to the South East corner ^{said} of Flanory land.

4 Which affords the larger volume of water the Flanory or the Hobbs Spring?

Ans. The Hobbs Spring is very much larger than the other.

5 Does not and cannot stock have access from the Flanory farm to the branch below the junction of said branches?

Ans. They can and do by taking them out through said fence and returning them to said Flanory farm. The branch runs almost wholly through timbered land but the land south of said junction is enclosed by fence on the Flanory side of said branch.

6 If said fence crossed said branch at one or more points it would afford ample water to that part of the farm would it not?

Ans. It would for that wooded boundary
of the land

3 7 You say there are some 20 or more families living in the town of Bryden that use water from Hydrants in said town, do you know of any of them, and if any, how many of them are paying therefor, and in this connection state how many of them are financially able to pay for it?

Ans. Of my own knowledge I do not know how many, if any pay for water. I know of none who are not able to pay for the water if they want to & will do so.

8 Are there not several of them who are so financially situated that you could not by law collect a debt from them, if so how many?

Ans. I do not know except by exterior appearances what their financial circumstances are.

9 How long have you lived in the Taylor house? during that time have you used water from said pipes, if so have you paid anything therefor, if so how much?

Ans. I have lived in the Taylor House 2 years; have used the water from said pipes all that

him and have not paid any thing for the water because Mr Punnington told me shortly after I began house keeping that he would make us a gracious gift of the water right because my wife was related to him

10. The barn and dwelling house ^{of George Punnington.} stand upon a part of the Levi Punnington home farm do they not?

Ans. I understood so

11. You say in answer to question six of your examination in chief that you think from all the circumstances the conveying of Water to said Town enhanced the value of lots one half. Now do you know of a single sale of a lot that carries a water privilege with it or a single sale in which water was promised, and is it not a fact that all lots sold before Water was conveyed to said Town sold for a higher price than they have since?

Ans. I do not know what the consideration of any of the sales of lots in said Town I saw a deed to the Baptist Church lots in which water was promised as long as it continued to run in the pipes

27
I was not here before the pipes
were put in & don't know how
lots sold them, but have learned
that they sold more in ac-
cordance with the boom price
of land at that time than they
do now.

12. How deep is the water in the spring house
give the average depth?

Ans. I would think it would average
from 10 to 12 inches

13. What kind of dam is used at the lower end
of the spring house to make the water deeper.

Ans. It consists of rocks and dirt
Some of the rocks are part of the
Spring House foundation and
some are loose ones put in
underneath the lower log
with dirt & gravel to bind
the water

14. How much stock is usually kept on said farm

Ans. There is now on the farm 2 head
of cattle, 3 head of horses and 8 hogs
for fattening purposes and some
five small pigs. The amount
of stock on the place since I
have known it has not varied
much from the above number

and further this deponent
swears not -

M. A. Orr, Jr

Lizzie A Orr another witness of lawful age
and being duly sworn deposes and says,

Ques 1. What is your age and where do you reside and
are you one of the plaintiffs to this suit?

Ans 1 Twenty Two Years old live in the
Town of Dryden, and am one of the Plain
tiffs in this suit.

2. How long did you reside on your fathers, Thomas
Hauerys, farm?

Ans I was 4 years old when I moved there
and lived there until I was married which
was 2 years ago.

3. Do you remember when your Grand father, Levi
Pensing, ran his pump logs to your fathers
spring, or rather do you remember there
being there?

Ans I remember said pump logs being there
They were there when we moved to the
farm.

4. Were they at any time discontinued or removed
and if so when and how long were they
discontinued?

Ans To the best of my recollection they were
discontinued for a while, I think this
was along about the year 1884, I don't

Know how long they were discontinued but I think for two or 3 years.

5. Have did it happen they were discontinued, if you know?

Ans They dug a well is the reason as I suppose that they were discontinued

6. Does the present arrangement, or not, in any manner injure the spring or create any inconvenience in the use of the spring or spring house, and if so in what respect?

Ans I do not know whether it injures the spring or not I know that it gets muddy easier now than it did before Uncle Elkavah. fixed it the last time I think the present arrangement is to some extent an inconvenience to the spring house, for the reason that there is a temporary dam at the lower end of the spring house and below the reservoir dam which sometimes causes the well to be overflowed

X 24

1. You say that the pump logs were about the year 1884 out for a while, was this at the head of the spring or some distance below the head.

Ans 1. It was same distance below the head, that is they were taken out at the head of the spring

and were put in the branch some distance below the spring & the water ran from the branch for watering stock and for washing.

2. Who took them out of the head of the spring and for what distance were they taken out, and where in the branch were they again put in?

Ans I suppose Mr Pennington took them out. They were taken out down to about where they were put in the branch. They were put in the branch about a little old house, perhaps 75 or 100 yds from Mr Pennington's house.

- 3 Are not the old logs that your Grand father had in the head of the spring still there, and are you not mistaken in any logs being taken out in 1884, and was not the break in the line of logs caused by the logs rotting and being washed out by the branch?

Ans 3. No sir they are not, I know they were taken out at the head of the spring, and as to the balance I don't know whether they were taken out or washed out.

And further this witness saith not.

Elizabeth A. Orr.

Rebecca A Flanery another witness of lawful age and being duly sworn deposes & says.

Thes 1. What is your age, and where do you reside?

Ans-1 Nine teen years Old, and reside with my mother at the Thomas Flanery Farm.

2. State what you may know about the pump logs run by your Grand father, Levi Pennington, to the spring on the said Flanery farm.

2 I remember he had pump logs running to the Spring, and conveying the water to his house. I remember at one time when they were taken out for discontinuing from the head of the Spring there was put in the branch about the Old McGuean house and water run from there to Grand pas house.

3. Was the point where the logs conveyed the water from the branch, on the Flanery farm or on the Levi Pennington tract?

3 It was on the Levi Pennington Tract
X Ex.

1 Were the logs taken out by some person if so by whom.

1 Don't know

2. Do you know how long the use of water from said spring was discontinued?
at the time said logs were out?

2

I think same Two or Three years
I think it was about the year of 1884
about the same time the well was
dug

3

You were pretty young then were you not?
I was about 8 years old

4

Were the logs taken out before or after the
well was dug?

4

After

5

How long after?

5

I don't know exactly

And further this witness saith not.

Rebecca C. Flauery.

Virginia, Lee County, to wit.

I R. W. Orr a Justice of the Peace in
and for the County and State aforesaid
do certify that the foregoing depositions
of A. J. Litton, Larkin Herndon, Polly O
Flauery, W. H. Hobbs, A. J. Cox, Wm A Orr Jr,
Lizzie A Orr & Rebecca A Flauery were
taken subscribed and sworn to before
me at the time and place and for the
purposes in the Caption mentioned.
Given under my hand this the 15th day
of October 1896.

Robert W. Orr J P

J. P. #8,25-

A. L. Flanery it also.

vs { Depts

Elkanah Pennington.

Filed May 4th 1897.

A. B. Munsey Clerk

J. P. 8 25
W. 3 50
J. 11 75

A. J. Litton.

Larkin Herndon.

Polly E. Flanery.

W. L. Hobbs.

A. J. Cox.

Wm. A. Orr Jr.

Lizzie A. Orr.

Rebecca A. Flanery.

(No. 3)

(1)

The depositions of Emmett H. Bryant
Elkanah Punnington, & others.

Taken pursuant to agreement at the Su-
perior Court in Dryden on the 29th day of October
1896. before me Robert H. Orr a Justice of
said County, to be read as evidence on
behalf of the defendant in a Chancery
cause now pending in the Circuit Court
of Lee County Ia in which H. L.
Flanory & others are complainants
and Elkanah Punnington is defendant
Present J. H. Orr Atty for Plaintiffs

" C. T. Duncanson Atty for Deft.

Emmett Bryant a witness of lawful
age being duly sworn deposes & says.

Ques. 1. Are you acquainted with the spring
on the lands of the Plaintiffs from
which Elkanah Punnington conveys
water in pipes to his dwelling and
thence to the town of Dryden, if
so how long have you known it?

Ans. 1. I have known it about three years

Ques. 2. When did you last see and have
said spring.

2. This Evening

Ques. 3. Please state how said spring is
arranged, if it is walled around, the
depth of the water inside of said
wall. ?

3 It is water with Brick and is about 3 by 5 ft in size. The water in side of wall averages Seven in depth

Ques 4. State if you know the depth of the water in the Spring house and outside of the wall you now just described?

4 In the Spring house it averages from 3 to 4 inches

Ques 5. How much water runs off from said spring outside of the pipes?

5 I think about enough to fill a boat 1 1/2 in pipe

Ques 6. Were you acquainted with said spring before said wall was put in?

6 Yes Sir I helped to put the wall in

Ques 7. Was Mrs Flanory or any of her children present when said wall was being put in, if so please state if they made any objection to its being put in, or said anything about it any way and if so what was said and by whom.

7 Messrs Flanory & his son H L Flanory were present while we were putting in the wall. I had no objection by them while we were putting it in. Harry helped us a little Once or Twice Messrs Flanory, Told Mr Pennington that

It would be very nice if he would put a cover over it, to keep the lives out of head of the Spring. There is Two large Decamones standing near the Spring I do not remember who mention putting the cover over first to cover was put over it

Ques & Please state whether or not, the wall thus put in, in anyway increases the usefulness or convenience of said spring?

8 To it close not

± Examined.

1. Was Mrs. Flannery present all the time or only when she came to the spring for water?
1 Once and a while. To get water or milk & Butter
2. Did Harney help any more than to assist in placing a large rock?
2 he helped to put in one large rock and helped a few minutes at another time
3. Is ^{there} ~~not~~ ~~there~~ considerable mud settled in the spring now on account of the water being dammed up?
3 There is some sand and mud be low the pool in side of the Spring house and further this defendant saith not.

Emmett F. Bryant.

2. Hannah Purneyton another witness of
lawful age being duly sworn deposes & says.

Ques 1. Are you the defendant in this suit.

1 I am

Ques. 2 How long have you known the spring
from which you carry water in pipes
to your dwelling house and thence to
the town of Tryden.

2 I think a bout Thirty Six Years

Ques 3 If there was a line of pipes by which
water was conveyed from said spring
before you put in the present pipes
please state who put them in, when
they were put in, their size and
all about it?

3 There was wooden pipes $1\frac{1}{2}$ in bore
from said spring, when my father
bought this place. I do not know who
put them in. Since that time there has
been a line of pipes kept up continually
of the same size bore. They would
rot out and then we would repair
by having new logs replaced

Ques 4 When did you take possession of the farm
you now live on, under the deed from
your father, and please state if you now
kept up and maintained a line of pipes to
and from that spring ever since, and

if you answer that you have so kept up said pipes, please state whether or not you have so kept them up under a claim of right?

4

I ~~over~~ did not get into full possession of the Tract until after the death of my Father and he has bin dead 8 or 9 years. I have lived on it for about 35 or 36 years, as above stated. The pipes were in all the time some times logs would rot out and some time the logs would wash out, where the line would cross the branch in several places when this would occur there would be a break in the pipes for a while until I could put them in. The intention was to keep the line in all the time. I have kept them in under a claim of right.

This answer is excepted to so far as it seeks to set up a claim or right as inadmissible, so such claim can be set up except by grant in writing.

Or, for Defts.

Ques 5. Did any one ever dispute your right or the right of your father to convey water from said spring in pipes, if so when and where?

5 to one ever disputed the right of
Father or my self, until this Suit was
brought

ques 6. Do you at present convey any greater
quantity of water from said spring than
was conveyed by the line of pipes your
father had in, if so how much more?

6 I am not conveying any more I have got
in the same sized pipe ~~tho~~ as has
bin in all the time $1\frac{1}{2}$ in in bore
there being about little fall from
Spring. For a short distance I have in
two joints of 4 x 3 in pipes so as
to start the water in to the pipes
which is $1\frac{1}{2}$ inches from there to my
dwelling house. From there $1\frac{1}{4}$ in
a distance and then reduces to 1 in
at first Hydrant and then smaller.

ques. 7. What was the cost of putting in the line
of pipes as at present in.

Ans. I cant tell exactly I gess from \$800⁰⁰
to \$1000⁰⁰ I kept no exact acct., From
the Spring to my house it is 1700 to 1800
ft From my house to the Road that is
the edge of the Town of Dryden
is about 1000 ft, and after crossing
the R. Road there is about 2500 ft of
pipe if I

ques 8 State the relative costs of the line of pipes from your dwelling house each way?

Ans I cannot state that with any degree of certainty.

ques 9 Please state whether or not the Town of Dryden is located on the farm conveyed to you by your father.

9 All or nearly all

ques 10. Did the complainants know that you were putting in said line of pipes at the time you were putting them in, if so did they take any steps to stop you or in any way object to your putting them in?

10 They did know that I was putting them in they did not take any steps to stop me from putting them in and raised no objections to me putting them in

ques 11 If I understand you, the line of pipes in and used by your father and yourself before the present line was put in only conveyed the water to your dwelling house, what then became of the waste water, and how did said waste water compare in quantity with the water now conveyed from your dwelling house to the Town of Dryden?

11

The line of pipe formally staped at my dwelling house, The wast water up to that time run out throug a ditch to the main branch same distance south of my house. About the same The old pipes and the new ones. being the same size in bore

gues 12. When were the present line of pipes put in.
12 The one the pipes was put in from 4 to 5 years ago

gues 13. Do you carry water to any point off the Levy Pennington tract of land, if so, on to whose land and how much water is carried off said land?

13 The whole line of pipes lyes on the Levy Pennington land. from my house to the end of pipes ther is one small $\frac{1}{2}$ in pipe runs across the main road on south side of the Town to water my stock feres out in troft by using a stop cock when to water said stock this land is ~~my~~ land it use to be long to France ~~from~~, and is not a part of the Levy Pennington land.

gues 14. State what land it is where George Pennington uses water for his house and barn

13. Ans It is part of the Levy Pennington home place. Ther is 14 acres of George's land.

ques 15. It has been stated that a well was dug at your home place, when was that done, and why was it done, and in this connection state whether or not you or your father had any intention of abandoning said line of pipes and your right to convey water from said spring?

15- Said well was dug about 12 years ago. It was dug for the purpose of getting cold water for drinking purposes. The water in the pipes was worn, and water witches told me I could get plenty of well water at little cost. The pipes at that time were old and water was not good for drinking purposes. I had no intention of abandoning said line of pipes or my right to convey water by pipes from said spring, and if my father had any such intention I never heard it.

ques 16. State how said spring is now fixed or walled and state whether or not the present arrangement injures said spring or in any way interferes with the use thereof.

Ans 16. The said spring is now walled with brick and cement. I don't consider that waling of the spring injures it.

but quite an advantage to it and then that makes it the spring inside of the wall is from 7 to 8 in deep, the water inside of spring house where they keep their milk is from 3 to 4 in deep and is stationary with the level. so either they have it shallower or deeper as the water is dammed at the lower side of the spring house, by loose Rock sand & gravel for the purpose of damming the water for their benefit

ques 17. State the proportion of water carried off by said pipes.

17 my opinion is that the pipe carries about half of the water of the spring

ques 18 Please state whether or not the quantity of water left is sufficient for purposes of said farm and all the stock it would maintain.

18 I think so and enough for several other farms of the same size

ques 19 How was the kind of said spring arranged when the old line of pipes was in, that is before you walled it up?

19 The spring was walled by ruff Rock so that the mud and muddy water would run in and leave it in a bad shape after rains

The present wall does not raise the water ^{higher} than the old wall

q^{ues} 20. How are said pipes arranged at your house, in the Town of Dryden. I mean is the water confined in said pipes by stop cocks or are the pipes open and the water allowed flow off freely.

20 I have a small back stop, or globe valve to draw water or to ~~let~~ let water to run in to the Spring house & in the Town of Dryden with hydrants & stop cocks at the end of line of pipes at George Pennington the water runs out on said George Pennington Land

q^{ues} 21 At the time you put in said reservoir or wall was it satisfactory to the plain Tiffs, ~~did~~ they express themselves pleased with ^{it} how this was.

complaints seemed to be pleased with what I had done to said spring, until W. D. Orr - junior married in ^{the} the ~~family~~ family, and him had some differences on some business, & from that time on I could hear of him telling others that he was aiming to give me a law suit & parties told me that he told them that he liberated them to use water for fire free

By agreement an adjournment was taken
at this point until sometime after the
the week end of the circuit court
said time to be agreed upon by the parties
the 29th day of October 1896.

Robert W Orr J.P.

Dryden 7th April 29th 1897

Met pursuant to agreement, at Dryden
you present H. J. Orr Jun one of the Plaintiffs
and J. W. Orr. Attorney for Plaintiffs and
Elkanah Punnett Defendant and C. S.
Horseman his attorney this the 29th day
of April 1897.

Robert W Orr J.P.

Elkanah Punnett witness further
testified and deposed as follows.

22. Since testifying as above have you had any
conversation with the plaintiffs or either of
them relative to this suit, and as to the effect
of said Pipes on said spring if so state
with whom you had said conversation
and what was said?

I have had several talks with H. J. Orr
Jun about our lawsuit he told me that
any body could see that the Spring was
not damaged in the least, but that wall
kept out the muddy water ^{out} in times of

heavy rains. & he said there was lots of waste water out side of the pipes for any stock that may be kept on said ^{farm} & he said these words to me as I am his uncle he said uncle baner I am sorry that we ever gave you any trouble & if will orr hadent of got mad at you there would have been no suit brought & that he was going to quit the suit said he had never had any faith in getting any thing of me only by compromise & then backed Dock Walord with & other said & scare what they could out of him

This answer is excepted to because the defendant H. L. Hlavery has sold out his interest in the tract of land and in the subject matter, since the institution of this suit, to the plaintiff Elizabeth A Orr, and any admission by him can not prejudice the rights of the other ^{Plaintiffs} ~~defendants~~, any more than an admission from any other disinterested person.

James W Orr, for Defts.

+ Examined. You have stated in your examination in chief that your present pipes, you think, cost you from \$500 - to \$1000 - Now is this the nearest you can come to their actual cost?

Ans. I suppose it is. I have kept no accurate account. There was considerable ditching to do.

Ques 2. Did you not tell your sister Mrs Mary E Flannery that they cost you from \$500- to \$600- but that you told others they cost more?

Ans. I never did that I have any recollection of.

Ques 3. You have stated that the depts made no objection to your fixing the spring and putting in the pipes. Did you not first intend to convey the water to Dryden for the R. R. Co. and with that intention talk to Mrs Flannery about her and the children giving you the right to do so, and did she not tell you that she would make no such right for less than one thousand dollars, and if she did that the children would give you trouble about it when they became of age?

Ans. I undertook to convey water to my house & also to pipe the waist water from my house over to Dryden & thence Dryden to a part of the Levi Pennington Land as to consulting my sister of putting in pipes I have no remembrance of any such consultations but after the pipes were in she said ^{to} me that she had been told that I ought to give her some of the profits paid by the Dryden People I told her that there wasent

any prophet on what had been said me
by the dryden people & as to her threatening me
of trouble by her or her children i am positive
that such a thing was never spoke of. but
when i told her that i would carry the amount
of water that had for many years poured out
in waist at my house over & beyond Dryden
to parts of the Lodi Peninsular Land & that
i was taking no more water from the
spring than had been usually taken by
the former pipes. Then she seemed to be
satisfied & said that i had been a great
help to ~~her~~ in raising ~~her~~ children & she
could hardly live without my help.

Ques 4. Will you please answer whether or not you
first proposed or intended to convey the water
to Dryden for the Rail Road Co?

Ans i had no such aim as to running water
for the R. R. Co but as the pipes are out
in the Commons the R. R. men get water
as does every body else does so want it

Ques 5. Did you not at the suggestion of Capt O-
Brien, Chief Engineer, or some other of the
R. Road officials propose to convey water
for the Rail Road from the spring in ^{compromise}

Ans not specilly for the R. R. Co. i do not ^{know} what
was said first & last ^{about} that matter.

Ques 6 I do not want to know what was said about the matter, but want to know if you did not propose to sell the Rail Road Co' a water right, or furnish them water from said spring?

Ans as to what was talked of or proposed i do not remember i suppose Deeds will answer that satisfactory

Ques 7 Did you propose to sell or furnish them water from anywhere.

i did not propose to sell them any water from any where, the Depot being on the Levi Burlington ^{land}, i agreed for them to use water as every body else does. from the Hydrants of the pipes in Dryden.

Ques 8. Was this all the right ^{or privilege} you ever proposed to sell or give the R. R. Co, before or after their road was completed at Dryden.

Ans as well as i remember the R. R. Co talked of building a water Tank at this Depot at Dryden & ask me to let or grant them a right to the spring for that purpose which i was advised that i did not have the right to do so & i did not do so.

Ques 9 Did you not, before you put in your present pipes, tell Mrs Flavery for the purpose of getting her consent, that you would leave it to the

boys, meaning John Lyon & Billie Hobbs, as to what part of the profits she should have on the water to be delivered in Dryden?

Ans. If there ever was any such conversation I have no recollection of it, I can't see what would bring up such chat as she made no objection to the pipes being put in.

Ques 10. You say the well was dug with no intention of abandoning the pipes, Was not the wooden pipes at the time the well was dug and for sometime after, out of use, except from your house to the branch?

~~the as well~~

Ans The pipes may have been bored out ~~out~~ in places as wooden pipes frequently do sometimes the water wouldn't run all the way, as to the condition at the time the well was dug I do not just remember but I never had any such thoughts as abandoning the line of pipe first because I needed the water for general family uses to eat with wash with work clothes keep our ditch in Milk house ^{&c}

Ques 11 Do you remember any time when the water was conveyed in the wooden pipes only from the branch about one third of the way from your house to the spring, and you or your father had a metal strainer on the end of the log at the branch?

Sus 11 it seems to me that there was a time when
Lags was roted & masted of in crossing the
Branch several times & that we had to carry
our drinking water from spring & kept the
water ^{running} from spring branch for all other
purposes until we could save up & repair
said line of pipes but as i hav all ready
stated i or we never had any such thoughts
as getting to use the water by the line of
pipes but i do not remember of any time
when there wasent lag pipes in at the spring
in fact when i went to put in the Iron
Pipes i took out the wooden pipes which was
pine lag & just below the spring there is
now some of the old pine ^{lags} still under the
ground joined to gether, and as to strainer
over said lag at spring branch i do rem
ember but would suppose that we had
something of the sort to keep trash out.

Ques 12 Was there not as much as a year, or more,
at a time, that there was no water running
to the house through the lags except from the
branch?

Sus 12 i cant remember definately but about think
it was but a short time for it being along
distance to carry water we fixed them up
up as soon as i could be able to do so.

Ques 13. Were not the old pine logs you speak of, logs that were simply left in the ground and not in use, or was the water all the time running through them as when they were first put in?

Ans 14 the water was running throu them for a short distance when i pulled them out to put in iron pipes, probably about 100 ft

Ques 14. You have stated, in chief, that you had no trouble with the plaintiffs about the water &c, until Wm A Orr Jr. married in the family &c, and that after you and he fell out, you was told by persons that he threatened you with a suit. Now who told you this?

Ans 14 if i mistak not John Tayler S. E. Dehoke & others generall talking & rizing me about Bill Orr going to Law me.

Ques 15. You have said there is water enough left at the spring to supply several farms. Now many do you mean by several?

Ans 15 other good farmers said there was enough water out side of pipes for three or four such farms & think the same.

Excepted to because not responsive as to what others say & not admissable.

Orr, for Plff.

Ques 16 When & where was it that H. L. Flawry said to

you what you say he did in your answer
to ques "22" in your examination in Chief,
about the spring &c. (Not making exceptions)
Ans 16. i. and he had several long talks at different
places & ~~between~~ at different times
shortly after the injunction ^{was} refused for
the Plaintiffs we had a long talk on my walk
that leads from Depot to my house, and
several times in Deyden before he had
sold out his inst in said Land, which
the spring is on ~~the~~ he told me on the
walk that Judge Orr wanted to see
me on business about the suit said he
did not suppose that they would give me
any more trouble but that we are going to
pull old Dock Matord for all that we can
This answer is excepted to in so far as not respon-
sive, and because it develops that the talk,
if any, was in reference to a compromise.

Orr, for Peffs.

And further this witness saith not.

Elkanah Purinton.

George H. Purinton another witness
of lawful age being duly sworn depo-
ses & says.

Ques. 1. State your age and residence? 2

Ans. I am 30 years old. Live at Dryden Virginia

2. State your relationship to Elkanah Pennington the Defendant in this case also your relationship to the late Levi Pennington deceased?

Ans. I am a half brother to Elkanah and a son of Levi Pennington Deceased.

3. Please state if you are acquainted with the homoplace of Levi Pennington The farm owned by Thomas Flanory at the time of his death and the spring on said farm. if so how long have you known them.

Ans. I am acquainted said farms and spring and have known them all my life.

4. Please state whether or not there is now a line of pipes which carries water from said spring, how long said line of pipes have been in and whether or not before the present line of pipes were put in and carried water from said spring, if so state how long you know said pipes to be in and to what point water was conveyed by them.

Ans. There is a line of pipes which carries water from said spring to Elkanah.

Pumington's house and thence to the town of Dryden. The present line of pipes has been in about five years. before the present line of pipes were put in there was another line of pipes running from said spring and conveying water from there to the dwelling house formerly occupied by Levi Pumington. The same house where Elkanah Pumington now lives. The last named line was in when I can first remember.

- 5 Was there any time before the last line of pipes were ^{put} in that the taking of water from said spring in pipes for use on the Levi Pumington home farm was abandoned or given up.

Ans. There was one time when water was carried from the branch below the head of the spring. This was about from 7 to 9 years ago.

- 6 What was the cause of conveying water from the branch instead of from the head of the spring and how long did that condition continue.

Ans. My recollection is that the pipes had given out and were leaking badly and

my brother Elcanah had dug a well at his house and he concluded that the well would produce water sufficient for drinking purpose and the water from the branch could be used for stock and washing purposes.

That condition only lasted a short time. my impression is something like a year, we then hauled red cedar logs from Goff Sprueller had them bored and repaired the line of pipes. The pipes never were taken from the head of the spring. There was only a break in them at the branch.

7. Was this in the lifetime of your father or after his death.

Ans. It was along about the time of his death, partly before and partly after, as I remember.

8. Was the right to convey water from spring ever abandoned, surrendered or given up by your father or by the said Elcanah.

Ans. No. That I had any knowledge of

9 Please state the present condition of said spring, its condition during your fathers lifetime, and whether or not

The present arrangement at said spring is better or worse for the convenient use of it by the present occupants of said farm. Than it was when the old line was in, in the lifetime of your father?

Ans The spring is fixed up better now than it formerly was. It is walled up better and is ⁱⁿ a cleaner and better shape.

10 Please state whether or not said spring is a large and bold running spring and if you answer that it is, please state about the proportion of water that is conveyed away from it in pipes

Ans Said spring is a very large and bold running spring. I hardly know how to answer as to the proportion but my best opinion is that at no season is there more than one half of said water carried off in pipes

11. Please state whether or not there is left after conveying away in pipes what is conveyed, water sufficient on said farm for family, stock, and farm purposes for the usual uses of said farm and the stock it will maintain.

Ans. There is and has always been plenty left at every time I ever saw to.

12. On what farm is the town of Dryden located?

Ans. On the Levi Pummington farm, conveyed by him to Elkanah Pummington.

13. You have stated that before the present line of pipes were put in, that water was conveyed in pipes to the house place of your father. State the size of the bore in said pipes, and in the same connection state whether or not the old line of pipes conveyed all from said spring more or less water than is now carried from it.

Ans. When I can first recollect the pipes in were pine and old and the bore in them or in most of them was worn & from an inch and a half to two inches in diameter. We then had cedar pipes bored. The bore in these was $1\frac{1}{4}$ in diameter, and we took the old logs with the worn bore and reversed them and used them at the head of the spring, and the new logs for the down or at the house end. I am of opinion that the water conveyed by said

Two lines of pipe were about the same. I know that when the water was conveyed to the house that it it was then conveyed to a trough for stock water that it then ran off in a branch through the small meadow below the house to the branch. When the lot was in meadow was not in grass there was a channel about where the walk now is along which the water made its way to the branch. He could turn it either way.

14 Please state whether or not the farm of the Plaintiffs is in any way injured by the present line of pipes and the water that they convey away from said spring.

Ans Not that I can see.

+ Examined You say that the farm of plaintiffs is not injured that you can see. Is the defendant benefited?

Ans 1 I suppose he is the use of the water.

Ques 2. What is the size of the present pipes at spring, and generally?

Ans 2. My recollection is that the present pipes are 2 inches up next to the head. They may be larger one at the head but I have not noticed.

Ques 3 If there are two joints at the head, the first

one 4 inches and the next 3 inches, would this not take and force more water than if the pipes were only 2 inches all the way?

Ans 3 It would give it greater head way and pressure.

Ques 4 Have you in fact observed closely the condition at the head of the spring since the present pipes were put in?

Ans 4 Yes I have noticed the head of the spring several times.

Ques 5 Have you observed the ditches made by the defendant on the north and south side of the spring when he put in the present pipes.

Ans 5 I don't know that I have.

Ques 6 In its present condition, should mud or insects get in the head of the spring as it now is, would they have the same chance to wash ^{out} and get out as before?

Ans 6 I don't remember how it is fixed as to draining. As it was before it was walled or dammed with rough rock & not cemented. And further that this defendant has the right

Witness claims 1. day .30

G. W. Pennington

Harvey Rivers another witness of lawful age being duly sworn says:

1. Are you acquainted with the form of the plaintiffs, the form formerly owned

by Levi and now by Elkanah Pennington
and are you acquainted with the
Spring on the farm of the Plaintiffs, if
you state that you are please state
how long you have known them?

Ans. I am acquainted with said forms
and Spring and have known them
for about 15 yrs.

2. If you ever lived on either of said
forms please state which one, when
it was and how long you lived on it.

Ans. I lived on the farm now owned by
the Plaintiffs, this was in the lifetime
of Thomas Flanory who then owned
it and was some 12. or 14 yrs ago
I have also lived with Elkanah ^{Pennington} Flanory
on his farm where he now lives.

3 Please state what kind of Spring is on
the farm of the Plaintiffs

Ans. The Spring is a tolerably large cold
running Spring.

4 Please state whether or not there
was at the time you lived on said
farm of the Plaintiffs, a line of pipes
laid from said Spring, and if as to
what point they conveyed water
and if there was enough water left

for farm and family purposes?
 Ans. There was a line of pipes there then and has been ever since I know the place said pipes conveyed water down to the Levi Pennington house place. There was plenty of water left for family and farm purposes.

5- Please state if you know which conveyed most water from said spring the pipes that are now in or the pipes that were formerly in?

Ans I do not know the size of the pipes now in the head of the spring

3 I should not think there is much difference, as I see no difference in the amount of water left or wasted there ^{now} and formerly. There is plenty wasting there now and there was plenty wasted there then.

6 How was the head of said spring arranged or fixed when the old line was in and how is it now arranged

Ans When the old line of pipes were in the head of said spring was better walled up with loose rock, and now it is walled up with brick cemented and fixed very nice.

7 Which of the walls the old or the new afforded best protection to avoid spring from mud or surface water?

Ans. The new wall.

8 Does the new wall improve or injure said spring, in way of convenience for family use.

Ans. I think it considerably improves it.

9 It is claimed that the new wall some times causes the water to raise so high in the Spring house as to overturn the mill, can you explain how this is, and in this connection please state if there is any reason why mill would be more liable to be overturned by water in the new than the old wall?

Ans. I have not been inside the Spring house since the new wall was made and I think the mill overflowing depends on the nature of the damming at the lower end of the Spring house and this ^{is} easily arranged by the users to make the ^{water} deep or shallow as desired as the wall at the lower end is not cemented. And is loose rock and sand or was at the time I was in it

10 During the time you lived there did you ever hear Mr. Flannery or his wife make any complaint about the conveying of water in pipes from said spring

Ans I never did that I remember.

11 Before water was conveyed from ^{To the Town of Bryden} O'Kearns Punnington's house, what became of the waste water at said Punnington's house

Ans It ran first into a trough for his stock then ran off through his meadow to the branch.

+ Exhibit, I believe you say you do not know the size of the present pipes, do you remember the size of the old pipes?

Ans 1. I guess the old ones were $1\frac{1}{2}$ in or more from being worn.

Ques 2. Do you remember any time that the old pipes only ran from the branch to the house?

Ans 2. Yes sir, there was a time that they only ran from house up the branch a piece.

Ques 3 When was this and for how long did it continue.

Ans 3 It was at the time the dept had a well dug, and thought the well would supply his drinking water and ran the other for his stock, from the branch, This continued

for a year or more, I cant state exactly how long.

Re-examined

- 1 Would you make any difference if you owned said farm in having said spring welled as it is and the water carried away in pipes as it is, and if the spring was in its natural state if so which would you rather have it?

Ans As to the well around the spring that is all right, and there is always plenty of water there and I dont know that I would make much difference.

Re + Exmnd. If you owned the Flavery farm, and the spring in controversy, and no one had the right to divide the water at the spring with you sell it to others, would you not think yourself entitled to the proceeds and what difference would you then make?

Ans 3 If no one had such right I would not want the pipes put in, and I would think I was entitled to Compensation if they were. And further this deponent saith not.

Witness 1 day.
50 cts.

Harvey X Rivers.

Adjourned until tomorrow at same place.

R W Orr J P

Met pursuant to adjournment this 30th
day of April 1897. present same parties
and attorneys as on yesterday.

R W Orr J.P.

N. L. Jesse another witness of lawful
age being duly sworn ~~swore~~ says:

1. Are you acquainted with the tract of
land formerly owned by Levi Pummington
called his home place, the farm owned
by Thomas Flannery at the time of his death
and the spring on the east named farm
if so how long have you known them?

Ans. I am acquainted with both farms and
the spring, have known them for 20 or
25 years. My brother George & Jesse
formerly lived on the Thomas Flannery
farm.

2. Please state the condition of said
spring when you first knew it, whether
or not water was conveyed in pipes
from said spring, if so where was it
conveyed to.

Ans. I do not remember how it was then
walled, I remember that it was a good
large spring. Water was then conveyed
from said spring in wooden pipes
to the house of Levi Pummington on his
home place.

3 At that time was there water left sufficient for farm and family purposes on said farm.

Ans. I do not remember anything in reference to the amount of waste water then left there.

4 Have you recently examined said spring, if so state when it was, and state the conditions in which you found said spring?

Ans. I examined said spring recently, in October last I think. The spring is in fine condition as I look at it. It is walled around with a good wall. I measured the water in the head of the spring and think it was 7 inches deep, though as to this my recollection is not positive. I measured the water inside of the wall in the spring house but do not now remember the depth.

5. At the time you examined said spring please state if there was water sufficient left and flowing out side of the pipes for farm and family use on said farm?

Ans. Yes Sir plenty as I looked at it. There was a right smart branch running off in waste and this as

well as I remember was in a
time of low water.

And further this deponent saith not.

L. L. Jesse

George C. Jesse another witness of lawful
age being duly sworn deposes & says.

- 1 No you know the farm formerly owned by
Thomas Flanory, and now owned by the
plaintiffs in this suit or some of them, if so
how long and how well have you known it.

Ans

I have known said farm for 20 years
I lived on said farm for two years.

- 2 Please state what kind of spring is on
said farm. The condition said spring
was then in, if walled how it was walled
and whether or not there was then a
line of pipes which conveyed water
from said spring.

Ans

It is a fine cold spring. It was not
walled when I lived on said farm. There
was then a line of pipes which conveyed
water from said spring to the Levi Pen-
nington home place, where Elkanah Pen-
nington now lives.

- 3 Please state if you know the size of
the bore of said line of pipes.

Ans

I do not know.

4 Was there water enough left outside of said pipes for farm and family purposes on said farm?

Ans. There always was for me.

5 How you recently examined said spring if so where was it, and what kind of condition did you find said spring in.

Ans. I examined said spring in October last as I now remember. I found said spring walled up with bricks. as I remember the basin walled around is 6 feet long and 3 feet wide. I measured the depth of water in said basin, and I recollect it was deeper at some points than others I think I found one place 10 inches deep the average depth I think was about 7 inches. There is a spring house built at the lower edge of said basin. I think the upper wall of said spring house runs a little above the lower end wall of said basin. I do not know the size of the spring house. I also measured the water in the spring house and found it to be about 3 inches to $3\frac{1}{2}$ inches deep. There was a line of pipes running away from said spring. This line of pipes starts from a point in said basin just above the upper wall of said spring

house.

- 6 Please state whether or not there was ~~water~~ at the time you examined said spring last fall, water left outside of said pipes sufficient for farm and family purposes on said farm.

Ans Yes Sir, there was plenty, I examined the branch below, and found plenty of water.

7. Please state if you examined it, how the lower wall of the spring house is arranged, with reference to drawing water into said spring house?

Ans My recollection is that the bottom log is just above the water a little distance and that there is no solid wall under said log, but that you can with your hands rake out the sand and gravel so as to make the water deeper or shallower in the spring house, as you see fit.

- 8 Is the condition of said spring at this time, better or worse than it was, when you lived there 20. or 22 years ago and give your reasons for saying so.

Ans It is in better condition. When I lived there, there was no wall around said spring, and then the branches and surface water in times of rains would

flow into it. Now it is walled up with a neat wall which protects it, as I think from this overflow of surface water and it looks a great deal better.

3 9 Please state the size of said farm its character as to fertility and about the amount of stock, that is horses and cattle that could be profitably kept on said farm, if prudently managed.

Ans I do not exactly remember the acreage of said farm but think it contains 115 or 120 acres of which some 50 to 60 acres is cleared. It is thin land. When I lived on said land I kept on it as much stock as I thought could be kept there profitably. I kept from two to three horses about 3 Milch cows and usually fattened 8 to 10 hogs per year.

10 How far from the head of said spring to where ^{the branch runs from} it enters the Hobbs branch, and how far from the junction of said branches to where the water in said branches runs so entirely away from said Flanory land.

Ans About 60 to 75 feet I guess though I never measured it, and from the junction of said branches to where they leave said land I would think is 150 or 200 yds.

And further this Depoant sw to not
witness claims 1 day 50. L. C. Jesse

John W Scott another witness of lawful
age being duly sworn deposes & says

1 Do you know the land on which the
plaintiffs reside, if so how long have
you known it. And if there was ever
a line of pipes put into the Spring to
convey water therefrom state as
nearly as you can when this was
done and where the water was con-
veyed to?

Ans

I know said farm, have known it
30 years or more, I live some 3 miles
from said land. There was line of pipes
put into by Levi Pennington to convey wa-
ter from said Spring to his house but
I do not know how long ago this was.

2

How you examined said Spring at any
time recently, if so state the condition
you found it in. State fully all about
the size and condition of said Spring

Ans.

I was at said Spring sometime ago. I found
it in fine condition. It is a large well
Spring affording plenty of water. There
is a line of pipes starting from the
head of said Spring and conveying

water southward to Elkhorn Pennington
and thence on to the lower of Dryden.
There is plenty of water left after con-
veying away what is taken by said pipes
for farm and family purposes.

I speak of the conditions at the time I
was there I don't know whether it gets
any lower than it was when I was there.
It was then a pretty dry time.

Q What would you judge to be the volume of
water left there, or that is not conveyed
in said pipes, give the size of a pipe you
think it would fill.

Ans. I think there ~~would be~~ water enough
left to fill pipes as large as those
that are now in. In other words
I do not think the present line of
pipes carries away more than
half the water afforded by said spring.
And further this deponent says not.

Certified. 1. Day 50. J W Scott

The foregoing depositions of Emmett Boyant,
Elphrah Pennington, George W Pennington, Harney
Rivers, D. L. Jesse, L. C. Jesse, & John W Scott
were taken, subscribed and sworn to before me
at the time and place and for the purposes in the
caption mentioned. This April 30th 1897.

Robert W Orr J D

Justice Fee.
10 hours \$7.50

Elkanah Pennington

ads { Depts.

A. L. Flauery et als.

Filed May 4th 1877

A. B. Munsey Clerk

JP 750

Costs 3.50

\$753.50

(104)

Emmet Bryant.

Elkanah Pennington.

George W. Pennington.

Harvey Rivers.

G. L. Jessel.

G. L. Jessel.

John W. Scott.

H.L.Flanary et als

Plaintiffs.

vs.

In Chancery.

Elkanah Pennington,

Defendant.

Affidavit of G.W.Pennington.

I am a son of the late Levi Pennington, deceased. I am now 29 years old. I was born as I am informed on the Levi Pennington home place and I lived there until I was about 24 years old. My father had a line of wooden pump logs running from the spring on the Bridges place to ~~the~~ his residence on the home place from the time I can first remember up to the time he sold and conveyed said home place to my brother Elkanah Pennington, which I see from the deed was August 6th 1872, immediately the date of said deed & Elkanah Pennington took possession of said land and he continued said wooden pipes up to about the year 1891 when he took them out and put in a line of iron pipes. Up to the time said iron pipes were put in the water was conducted only to the dwelling house on the home place. There it was turned loose and ran in a branch through a small meadow down to where it passes into the branch. After the iron pipes were put in the ~~water~~ water in excess of what was used for family purposes was conducted on to the town of Dryden and there used by various persons. The wooden pipe at the head of the spring had as I remember a 4 inch bore for about 16 to 20 feet, then the pipes were two inches in bore for a distance of some 200 yards, then from there on to the house the bore was 1 1/2 inches as I remember. I am certain it was not less than 1 1/4 inches. My father always asserted the right ~~to~~ after the conveyance to my brothers William and Elkanah to conduct the water by said line of pipes to his home place. Elkanah Pennington after he became the owner of said tract of land asserted the same right, and he exercised that right openly, continuously, and notoriously up to the time I left said place about 5 years ago, and I see that he is still asserting it. I have noticed said spring carefully recently. I have noticed the amount of water that

is carried by the present by the present line of pipes, and I am certain that said spring is in no way injured for farm and family purposes and I do not believe there is any more water conducted by the present line of pipes than there was by the old wooden line put in by my father and maintained by my brother until the iron pipes were put in as aforesaid. The head of the spring has been very much improved by the reservoir or basin erected around it. I do not believe that said pipes in the lowest time of water carries more than one half of the water from said spring. I know that they do not diminish the supply of water so as to injudiciously effect the place owned by said complainants.

G. W. Huntington

Subscribed and sworn to before me on this, the 11th day of November 1895.

A. B. Munsey, Clerk

Flourerys
or { affidavit of G. W.
Pennington
Elkanah Pennington

Clerk 25-

H.L.Flanary etx als.

Complainants.

vs.

In Chancery.

Elkanah Pennington,

Defendant.

Affidavit of George C.Jessee.

I, G.C.Jessee, do solemnly ^{swear} that I am well acquainted with the spring situated on the tract of land described in the plaintiff's bill in this case as the Bridges tract, I lived on said tract of land two years while it was owned by S.C.Stallard, at that time Elkanah Pennington had a line of pipes leading from said spring to his home. I do not know the bore of said pipes. Said line of pipes in no way interfered with the use of said spring for family purposes. Said line of pipes did not diminish the supply of water to the injury of the said spring for farm purposes. I have been at said spring very recently. I find that Mr Pennington or some other person has erected around the head of said ~~spring~~ a brick wall laid down in cement which is about three feet by seven feet, which is a very great improvement on said spring over its condition when I lived there. I noticed said spring carefully, the water at the head of said spring where it is used for family purposes is about eight inches deep and the flow from said spring is about the same now that it was when I lived there. There is an abundance of water running off in waste to supply the farm with a great deal more water than is necessary. Said branch only runs from 100 to 150 feet until it enters another branch which I understand to be the line between said Bridges tract and the tract of land owned by Shelby Hobbs. The two branches then flow along in the same channel as the boundary line between said Hobbs tract and said Bridges tract for some two hundred yards; they then enter upon the old France Zion tract of land which is now owned as I am informed by C.D.Orr, and after passing over that land for a short distance said branch runs onto the lands of Elkanah Pennington. Said branch then for some distance forms the boundary line be-

tween the old France tract and the Levi Pennington home tract for
for some distance, It then flows onto the Levi Pennington
home tract for a few yards and sinks.

G. C. Jessor
Sworn to before me this the 11th
day of November 1895.
A. B. Munsey Clerk

Plavery &
vs { Affidavit of
G. O. Jesse
Elkanah Pennington

Q 25^{cts}

JAMES W. ORR,
JUDGE COUNTY COURT.

G. W. BLANKENSHIP.

ORR & BLANKENSHIP,
ATTORNEYS AND COUNSELORS AT LAW.
COLLECTIONS A SPECIALTY.

COURTS: LEE, SCOTT AND WISE COUNTIES, VIRGINIA; COURT
OF APPEALS, WYTHEVILLE, VIRGINIA; UNITED STATES
COURT, ABINGDON, VIRGINIA.

REFERENCES:

POWELL'S VALLEY BANK, JONESVILLE, VA.
PENNINGTON'S GAP BANK, PENNINGTON GAP, VA.
DOMINION NATIONAL BANK, BRISTOL, VA.-TENN.

Jonesville, Virginia, ~~May 1st, 1897.~~XXXXXXXX

----This is to certify that my husband, Thomas ~~H.~~ Flanary, deceased,
died on the 12 day of April 1884, and that the dates of
the ~~his~~ births of our children are as follows, to wit: H. L. Flanary
was born on the 30 day of September 1871; that Elizabeth A.
Orr, nee Flanary was born on the 20 day of September
1874; that Rebecca A. Flanary was born on the 24 day of Dec-
ember 1877. Given under my hand, this the 6 day
of May 1897.

Mary E. Flanary

Sworn to and subscribed
in my presence
the 6th day of May 1897
M. J. Orr
Notary Public

H. L. Flannery et als.
vs. Affiant of Polly
Flannery
E. Pennington.

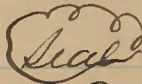
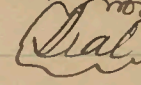
Filed as evidence
by Consent, May 15th
1897.

C. T. Duncan, Atty,
for Defendant,
James W. Orr, atty
for Plffs.

No 3
with Plffs Depos

This deed made, the 24th day of April 1867,
between Levi Pennington & Amanda F. Pennington
his wife of the County of Lee, and State of Virginia
of the first part, and William Pennington and
Eckarah Pennington of the County and State
aforesaid, of the second part, witnesseth, That
the said Levi Pennington and Amanda F. his
wife, in and for the Consideration of the sum of
two thousand dollars to them in hand paid, the
Receipt Whereof is hereby acknowledged, the said
Levi Pennington and Amanda F. his wife, hath
this day bargained and sold, and doth convey
unto the said William and Eckarah Pennington,
a certain tract or parcel of land lying and being
in the said County of Lee, containing Two thousand
and thirty five acres be the same more or less,
and bounded as followeth to wit: - Beginning
on the North side of a brushy ridge on a Ches-
nut, White oak, and Dogwood thence N 21 W 46
poles to a black oak ~~thence~~ in an Sink hole, thence
S 85. W 10 poles to three white oaks on a spur of
said ridge, thence N 35 1/2 W 90 poles to a pine
near the top of said ridge, thence N 53. E 240
poles to two Chesnuts + a pine, thence S 35 1/2 E.
50 poles to a forked Chesnut oak, thence S 50
W 10 poles, thence with the old original line
to a pine, Chesnut + black oak on a spur
of said ridge, thence S 30 E 80 poles to rock
in the edge of a branch between two springs,
thence down said branch 28 poles, with the
meanders thereof to beeches, thence leaving
said branch S 44 W 32 poles to a double ~~rock~~

white oak near a top of a ridge, thence S 44
to 40 poles to a black oak. & 2 Souther woods-
thence a strate line to a pine and black
oak on the top of a ridge, thence S 73 W 137
poles to the beginning, it being the same land
that the said Levi Pennington purchased of
James B. Briges; the said Levi Pennington res-
erves to himself full of privileges of water on
the above conveyed lands for the use of the
place he now lives on forever, and also the
use of timber so long as he lives, and the said
Levi Pennington also reserves the present crop
for his own benefit, and the said Levi Penning-
ton and Amanda F. his wife doth Covenant
with the said William Pennington and Eekarah
Pennington that they will warrant generally
the lands hereby conveyed, the above described
land stands good and for its purchase money
until paid for. witness the following signa-
tures and Seals.

Levi Pennington 
Amanda F. Pennington 

Lee County, to wit:

I, John Reason ~~as~~ Justice of the
Peace for the County aforesaid, in the State
of Virginia, do certify that Levi Pennington
whose name is signed to the writing above,
bearing date on the 24th day of April 1867, has
acknowledged the same before me in my County
aforesaid Given under my hand this 26th, day
of April 1867.

John Reason JP

Lee County Court:

We, John Reesor and George W. Young,
Justices of the Peace for the County aforesaid,
in the State of Virginia, do certify that
Amanda F. Pennington, the wife of Levi Pen-
nington, whose names are signed to the
writing hereto annexed, having date the
24th day of April 1867, personally appeared
before us, in the County aforesaid, and
being examined by us privily and apart
from her husband and having the writing
aforesaid fully explained to her, she, the said
Amanda F. Pennington, acknowledged the
said writing to be her act, and declared that
she had willingly executed the same,
and does not wish to retract it. Given
under our hand this, the 26th day of April 1867

John Reesor J.P.

George W. Young J.P.

Lee County Court, Clerk's Office, the 30th day of
November 1867. The foregoing Indenture of bargain
and sale for land between Levi Pennington
& wife, of the one part and William Pennington
& Elkanah Pennington, of the other part, all
of the County of Lee and State of Virginia,
being duly stamped, is admitted to record
upon the certificate of two Justices of the
Peace in and for the County and State aforesaid.

Teste John B. West & Co.

A Copy

Teste: S. W. Richmond Clerk

Levi Pennington wife
To { Deed

William & Elkanah Pennington

Recorded in Deed B.
15. Page 748


C 80


No 1.

copied

This Deed made October the 29th 1870
between William Pennington & Elkanah
Pennington of the one part and William
Yeary of the other part all of the County of
Lee and State of Virginia, Witnesseth
the said William Pennington & Elkanah
Pennington for and in consideration of
the sum of one thousand dollars to them
in hand paid the receipt whereof we
do hereby acknowledge hath this day granted,
bargained, sold and delivered unto the
said William Yeary a certain tract or
parcel of land containing by estimation
one hundred & twenty & a half acres
more or less lying and being in the
county and State aforesaid on the South
side of the Presha Ridge and bounded
as follows to wit: beginning on two Pines
& Black Oaks a corner to Francis Gions
land thence N 14 W. 12 1/2 to a rock in a
line of James Parsons all so a line
of the land conveyed conveyed by
Levi Pennington to his sons William &
Elkanah Pennington N 53 E with said
line 73 poles to two chestnut-oaks & pine
on the south side of the Poor Valley Ridge
thence S 35 1/2 E 50 poles to a double chestnut
Oak & a double white oak, On a steep hill
side S. 50 W. 10 poles to pine chestnut & black
oak on a spear of said Ridge thence S 30 E 86
to a rock in the edge of a branch between
two springs, thence down the said

branch 20 holes with the several meanders
thereof to two Beaches thence leaving the
branch S. 44 N 32 holes to a double white
oak over the top of the Breech Ridge
thence S. 44 N 40 holes to a black oak & 2
sower woods thence westwardly to the
beginning, it being a part of the same
land that William Zion sold to William
P. Davidson & Davidson sold to James B.
Bridges & James B. Bridges to Levi Pennington
& Levi Pennington to his sons William &
Elkanah Pennington & William & Elkanah
Pennington to William Geary to have and to
hold the said tract or parcel of land, the
said William & Elkanah Pennington binds
themselves heirs &c to warrant and defend from
all persons forever, Witnesseth the following
signatures and seals.

Elkanah Pennington 

William Pennington 

Lee County Virginia

I Larkin Healdson a Justice of the
Peace of the of the County & State aforesaid do
certify that William & Elkanah Pennington's
two names are assigned to the writings
above or hereto annexed bearing date on the
29 day of October 1870, have acknowledged the same
before me in my County and State aforesaid,
Given under my hand this 29 day of October
1870,

Larkin Healdson J.P.

Lee County Court, Clerk's Office the 16th day of January 1871

1 The foregoing Indenture of bargain & sale for
2 land between William Pennington & Elzavah
3 Pennington of the first Part, and William Yeary
4 of the second part, all of Lee County Virginia
5 being duly stamped is admitted to record
6 upon the certificate of a justice of the peace
7 in and for the county and State aforesaid.
8 Teste James M. Orr Clk.

9
10 A Copy -

11 Teste: J. V. Richardson clerk
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

William & Elkanah Brigham

To { Ded Copy
William Yeary

Recorded in Ded

Book 16

Page 194

C

C 75

2

No reservation.

This Deed made March 18th 1871 between
William Yeary & Rachel Yeary his wife, of
the one part; and S. C. Stallard, of the other
part; all of the County of Lee and State of
Virginia Witnesseth, the said William Yeary
and Rachel his wife, for and in considera-
tion of eleven hundred dollars, to them in
hand paid the receipt whereof we do hereby
acknowledge hath this day granted, bargained
and delivered unto the said S. C. Stallard,
a certain tract or parcel of land containing
by estimation one hundred & seventy one
half acres, more or less, lying and being in
the County and State aforesaid on the Brushy
ridge and bounded as follows to wit:
Beginning on two firs and black oak, a cor-
ner to Francis Gion's land thence N 14 W,
122 poles to a rock in a line of James Parsons,
also a line of the land conveyed by Levi
Tunington to his sons William & Edmanah
Tunington N 53 E with said line 73 poles
to two Chestnut-oaks & pine, on the South
side of the Poor Valley Ridge, thence S 35 1/2 E
50 poles to a double Chestnut-oak & a double
white oak on a steep hill side S 50 W 10 poles
to a pine, Chestnut & Black ^{oak} on a spur of
said ridge, thence S 30 E 86 poles to a rock
in the edge of a branch between two Springs,
thence down said branch 28 poles, with
several meanders thereof to two beeches,
thence leaving said branch S. 44 W 32 poles
to a double white oak, near the top of the

Crusky Ridge, thence S 44 W 40 poles to a black
oak & into Sourwood, thence westerly to the
Beginning, it being a part of the same.

And William Zion sold to William P
Davidson & Davidson sold to James, B.
Bridges & James, B. Bridges to Levi Pen-
nington & Levi Pennington to his sons
William & Elkanah Pennington & William
& Elkanah Pennington to William Yeary
& William Yeary to S. C. Stallard & have
and to hold the said tract or parcel of land,
the said William Yeary & Rachel Yeary, his
wife, bind themselves, heirs &c to grant and
defend from all persons forever,

Witnesseth the following signatures & seals,

William Yeary ^{mark} Seal

Rachel Yeary ^{Seal}

P.S. Be it understood that Levi Pennington
is to have a privilege of a water right to the above
mentioned Spring,

Lee County Virginia. I Larkin Herndon,
a Justice of the Peace of the County & State
aforesaid, do certify that William Yeary,
whose name is assigned to the writings is
hereto annexed, bearing date March 8, 1871,
has acknowledged the same before me in
my County & State aforesaid, Given under my
hand this March 18th 1871,

Larkin Herndon J.P.

J. S. Lee J.P.

Lee County, to wit: we Larkin Herndon

1 Daniel S. Reaser, Justice of the Peace in &
2 for Lee County in the State of Virginia, do
3 certify that Rachel Yeary, the wife of William
4 Yeary, whose names are signed to the writing
5 hereto annexed bearing date March 18th 1871,
6 personally appeared before me in the County
7 aforesaid, and being examined by us privately
8 and apart from her husband, and having
9 the writing aforesaid fully explained to
10 her she, the said Rachel Yeary acknowl-
11 edged the said writing to be her act and
12 declared that she willingly executed the
13 same & does not wish to retract it; Given
14 under our hands this March 18th 1871.

15 Larkin Herndon, J. P.
16 D. S. Reese J. C.

17 Lee County Court, Clerk's office the 18th day of
18 March 1871,

19 The foregoing Indenture of bargain
20 and sale for land between William Yeary
21 and Rachel Yeary, his wife, of the one part,
22 and Samuel B. Stallard, of the other
23 part, all of Lee County, State of Virginia
24 being duly stamped, is admitted to record
25 upon the Certificate of two acting Justices of
26 the Peace in & for the County & State aforesaid
27 Teste: Jno. B. West - Clerk

28
29 A Copy -

30 Teste: S. V. F. Richmond Clerk
31
32

Crusky Ridge, thence S 44 N 40 poles to a black
oak & live Sowerwood, thence westerly to the
Beginning, it being a part of the same.
And William Gion sold to William P
Davidson & Davidson sold to James, B.
Bridges & James, B. Bridges to Levi Per-
nington & Levi Perrington to his sons
William & Elkanah Perrington & William
& Elkanah Perrington to William Yeary
& William Yeary to S. C. Stallard, to have
and to hold the said tract or parcel of land,
the said William Yeary & Rachel Yeary, his
wife, bind themselves, heirs &c to grant and
defend from all persons forever.

Witnesseth the following signatures & seals,
William Yeary ^{mark} Seal
Rachel Yeary ^{Seal}
P.S. Be it understood that Levi Perrington
is to have a privilege of a water right to the above
mentioned Spring,

Lee County Virginia, I Larkin Herndon,
a Justice of the Peace of the County & State
aforesaid, do certify that William Yeary,
whose name is assigned to the writings is
hereto annexed, bearing date March 8, 1871,
has acknowledged the same before me in
my County & State aforesaid, Given under my
hand this March 18th 1871,

Larkin Herndon J.P.
Lee County, to-wit: we Larkin Herndon

William & Rachel Yeary
To Deed Copy
S. H. Hallard.

Recorded in Deed
Book 16. Page 264
S. W. Richmond

C 80

3

(3)

C

This Deed and Contract made and entered into this 6th day of August 1872 between Levi Pennington of the first part, and Elkanah Pennington of the second part, both of the County of Lee and State of Virginia Witnesses, That the said Levi Pennington for and in consideration of the sum of twenty five hundred dollars, hereafter to be paid to him by the said Elkanah Pennington & subject further to the conditions hereinafter recited doth by these presents grant bargain, sell and convey unto the said Elkanah Pennington a certain tract or parcel of land lying and being in the said County of Lee being the same land on which the said Levi now lives containing one hundred & twenty acres be the same more or less, being the same land conveyed to him by James F. Muncy and wife by Deed duly recorded in the Clerk's office of Lee County, and bounded as follows, to wit: Beginning at a white oak and gum on Cox's branch thence S. 33 E 30 poles to a forked tree on the west side of said branch, thence S 27 E 13 poles to the point of an island in said branch thence down said branch with the meanders thereof to the bridge near where the said branch sinks thence S 28 E 59 poles to a stake in a lane, thence N 67 E 4 poles to a stake thence S 32 E 16 poles to a black oak by the side of the big road, thence N 67 E 20 poles to a stake, thence S 27 E 21 poles to a white oak and

the original line, thence $N 76^{\circ} E 80 \frac{1}{2}$ poles
to two white oaks corner between the said Levi
and John Pennington, thence $N 2 N 172$ poles
to two post-oaks on the original line, thence
 $S 74 \frac{1}{2} N 70$ poles to a Dogwood, thence $N 5^{\circ} E 7 \frac{1}{2}$
poles to two Dogwoods and a white oak and
thence $S. 76^{\circ} N 107$ poles to the Beginning, To
have and to hold the said tract or parcel
of land unto the said Elkanah Pennington
his heirs forever and the said Levi Pennington
covenants that he will warrant generally
the land hereby conveyed, subject to the
conditions hereafter mentioned, And the said
Levi Pennington having heretofore conveyed
a tract of land to his two sons William &
the said Elkanah and reserved in the
Deed making said conveyance the right
to the free use and enjoyment of a certain
Spring situated upon the lands thereby
conveyed, for the use of the owner of the farm
by this instrument conveyed, and the same
being conveyed to the said Elkanah Penning-
ton, the reservation aforesaid is hereby
granted, bargained sold and conveyed unto
the said Elkanah Pennington his heirs as-
signs, But it is expressly understood
between the said Levi and Elkanah Pen-
nington, that the said Levi is to retain
full and complete control and possession
of the land hereby conveyed if he chooses so to
do during his natural life, The said Elkanah
Pennington on his part, hereby undertakes to

1 pay of the consideration heretofore mentioned,
2 the sum of two hundred dollars on the
3 first day of January 1873, and three hun-
4 dred dollars on the first day of January
5 1874 to the said Levi; In consideration
6 of this conveyance the said Elkanah
7 Pennington hereby undertakes to support
8 and maintain in a decent and com-
9 fortable manner, the said Levi Pennington
10 during his natural life and to support and
11 maintain for his use & benefit at all times
12 when desires one horse and ^{one} cow, the exclusive
13 property of the said Levi, The said Elkanah
14 is also to support, maintain & permit to
15 remain upon the premises hereby conveyed.
16 George W. Pennington infant son of the said
17 Levi until he shall arrive to the age of 21
18 years, if he choose so to remain with the
19 said Elkanah but should he choose to
20 marry or leave the house of the said Elkanah,
21 then the obligation to maintain him is to
22 be void from that time forward, It is further
23 understood and agreed between the
24 parties that if the said Levi Pennington
25 should live as long as ten years from the
26 date of this document and be maintained by
27 the said Elkanah, then the said Elkanah
28 is to have an abatement out of the considera-
29 tion money heretofore mentioned of the
30 sum of One Thousand dollars but should
31 the said Levi die before the end of ten
32 years, then and in that event the said

Elkanah is to have an abatement of the
consideration money at the rate of one
hundred dollars a year from this time
forward until such event shall happen.
Should the said Levi live ~~more~~ than
two years, no further abatement is to be allowed
than is herein before provided for. As
to the remaining one thousand dollars of
the purchase money not before specially
referred to after the expiration of ten years
from this day, is to be paid by the said
Elkanah to the said Levi at the rates of
\$100⁰⁰ per annum there after, if demanded
by the said Levi. Now should the said
Levi die at any time previous to the year 1880,
then and in that event, such of the purchase
money as shall remain unpaid, according
to the foregoing contract, shall be paid
to the administrators of the said Levi on the 1st
day of January 1880, if not otherwise disposed
of by the said Levi before his death to secure
which the Vendor here is hereby retained
by the said Levi for the payment of such
money. And it is further agreed between
the parties that should the said Elka-
nah die before the said Levi then this
contract & Deed of conveyance is to be
null and void, the land in that event
to revert to the said Levi who is to refund
to the administrators or heirs of the said Elkanah
such sums of money as he may have
advanced upon this contract. The said

Levi Pennington, on his part further agrees
to warr^{nt} the said Elkanah not to increase
his present family at the expense and
sustenance of the said Elkanah but
should he do so the expense of such
increased family is to be subject to future
contract. The said Elkanah Pennington
is to pay the taxes and County levies
annually assessed upon said land.

In witness whereof the said Levi
Pennington and Elkanah Pennington
have hereto affixed their hands
and seals the day and year first herein
written

Levi Pennington Seal
Elkanah Pennington Seal

Lee County Court:

I John B. West a Notary Public in
and for said County in the State of
Virginia do hereby certify that Elkanah
Pennington and Levi Pennington parties to
the foregoing deed and contract have each
acknowledged the same before me, in my
office to be his act and deed for the purposes
therein mentioned, Given under my hand
this 6th day of August 1872

John B. West N.O.
Lee County Court Clerk's office the 6th day of
August 1872.

The foregoing Deed and contract, between
Levi Pennington of the first part and El-
kanah Pennington of the second part, both

Levi Pennington
To { Deed Copy.
Elkanah Pennington
Recorded in Deed
Book 16, Page 521

C 1.35-

5-
(5)

The County of Virginia being duly shewn and
is admitted to record upon the Certificate
of John B. West, a Notary Public in and for
the County of Lee and State of Virginia,
Test James H. Carr Clerk

at Copy
Book: d. 2. 7. Richmond
Cecy N

James W. Orr,
Judge County Court.

George W. Blankenship.

ORR & BLANKENSHIP,

Attorneys and Counselors at Law.

COLLECTIONS A SPECIALTY.

COURTS: Lee, Scott and Wise Counties, Virginia;
Court of Appeals, Wytheville, Virginia; United
States Court, Abingdon, Virginia.

REFERENCES:

POWELL'S VALLEY BANK, JONESVILLE, VA.
PENNINGTON GAP BANK, PENNINGTON GAP, VA.
DOMINION NATIONAL BANK, BRISTOL, VA.-TENN.

Jonesville, Virginia,

Copy Bill - Then the Exhibits, leaving off the
certificates of acknowledgments of deeds.
Then the Answer, of Elkanah Pennington.
Then the depositions of Pelffs. omitting the Caption Certificate.
And including the affidavit of Polly Slavery,
and the endorsement thereon.
Then the depositions for Deft.
Then the final decree.

Memo to
Copy Record in
Hanover Case

Need not copy this
batch of papers.

To Elkanah Pennington:-

You will please take notice that on the 11th day of November 1895, at the Court House of Lee County, Virginia, we will move the Circuit Court of said County to grant an injunction enjoining and restraining you from using water from our spring, and especially from renting or selling the same to citizens of Dryden, Virginia, or other persons and to compel you to account for the rents and profits received by you heretofore for the use of said water.

H. L. Flanary,

Lizzie Orr,

Rebecca A. Flanary,

Mary Flanary.

By--

Pridemore & Sewell,

Orr, Blankenship & Ewing, their Attorneys.

H. L. Flansburg et al
vs } notice.

Elkanah Pennington

Executed by
delivering a
true copy of the
within notice to
Elkanah Penning-
ton this Oct 26
- 1895. J. M. Weston
Deputy for
Wm. P. Weston
S. L. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

Elkanah Flanary

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held
for the said Court on the *1st* Monday in *February*, 189*6*, to answer a

bill in Chancery, exhibited against *him* in our said court by

*H. L. Flanary, Lizzie Ormore Flanary, Rebecca
A. Flanary and Mary Flanary. The said Rebecca
A. Flanary being an infant and under age Sues
by her next friend H. L. Flanary.*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-

house, the *21st* day of *January*, 189*6*, and in the

120th year of the Commonwealth.

A. B. Munsey Clerk.

A. L. Flanary et als

vs.

SUPREMA

{ IN CHANCERY.

Elkanah Pennington

Or. & B.

p. q.

To St. Feby Rules,
Circuit Court.

Granted Jan. The
29. 1896 by
opening and
delivering a true
copy of the
within notice
to Elkanah —
Pennington
H. L. Flanary, D. J.